United States
Environmental Protection
Agency

Office of
Enforcement and
Compliance Monitoring
Washington DC 20460

December 1988

# FY 1988 Enforcement Accomplishments Report

The FY1988 Enforcement Accomplishments Report was prepared by the Compliance Evaluation Branch within the Office of Enforcement and Compliance Monitoring. Information contained in the report was supplied by the EPA Regional Offices and Headquarters program offices. The following persons participated in the writing, editing, and production of this report: Rick Duffy, Bill Watt, Robert Banks, Eloise Furbush, Merle Miller, and Joyce Johnson.

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# I. ENVIRONMENTAL ENFORCEMENT ACTIVITY

## Federal Judicial and Administrative Enforcement Activity

### Judicial Enforcement - Civil

Federal environmental enforcement activity is proceeding at levels unmatched since the Environmental Protection Agency was created in 1970 to enhance the protection of human health and the environment from the risks resulting from environmental pollution. Since that time, EPA has referred 2,912 civil cases and 258 criminal cases to the Department of Justice (DOJ) for prosecution (see Illustration 1 below). In FY1984, EPA developed and instituted a number of management improvements to ensure that an effective and vigorous enforcement program was maintained. Since then, the Agency has referred to DOJ 1,545 civil cases (53% of all civil cases referred since the Agency's creation) and 212 criminal cases (82% of all criminal cases). In FY1988, EPA established new high-water marks for both Federal civil and criminal judicial enforcement activities with 372 civil cases and 59 criminal cases referred to DOJ.

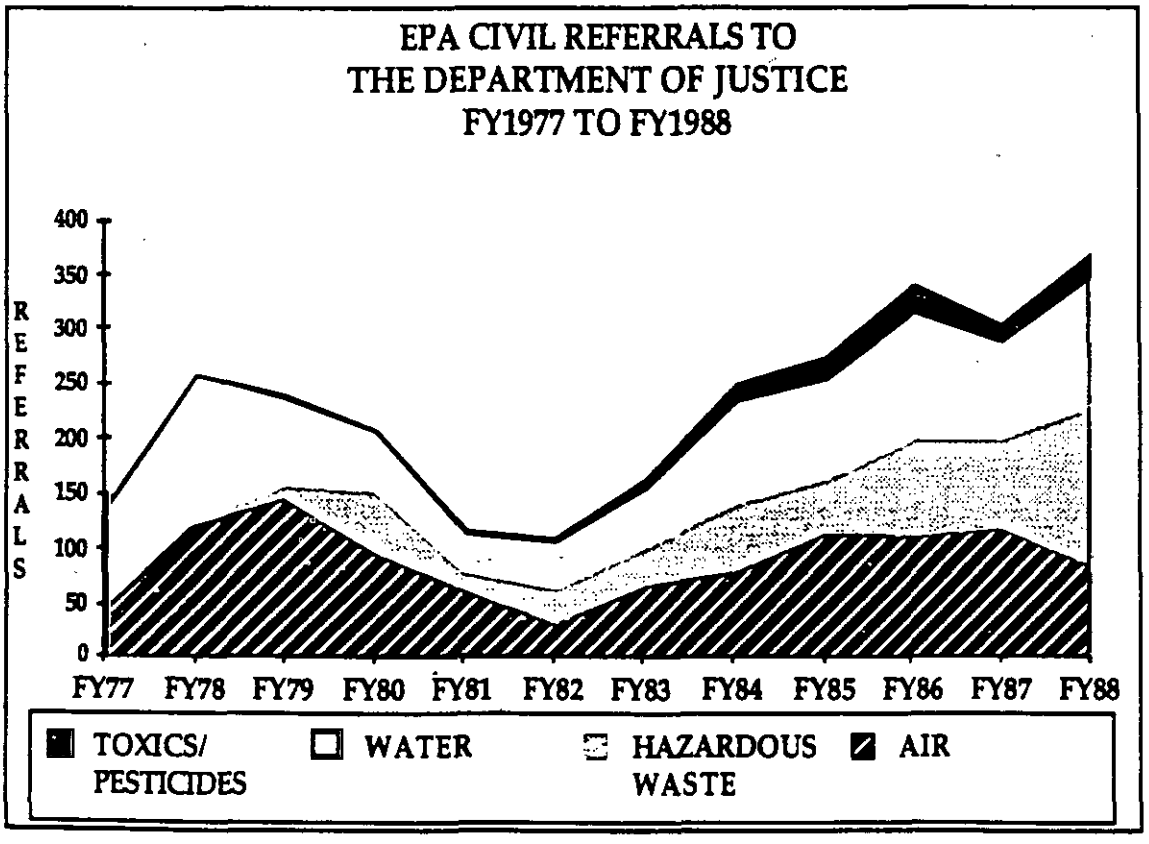



Illustration 1

## Judicial Enforcement - Criminal

The Agency's criminal enforcement program has steadily expanded its presence in the regulated community. As the second illustration indicates, criminal case referrals, numbers of defendants charged, and defendants convicted have increased over time. Since 1982, individuals have received prison sentences for committing environmental crimes totaling 91 years and over 450 years of probation have been imposed. Imposition of probation is an extremely effective part of the criminal program because in the event that an individual commits another crime (not limited to environmental crimes) while on probation, the provisions of the probation normally call for the automatic imposition of a prison sentence that was suspended in lieu of probation.

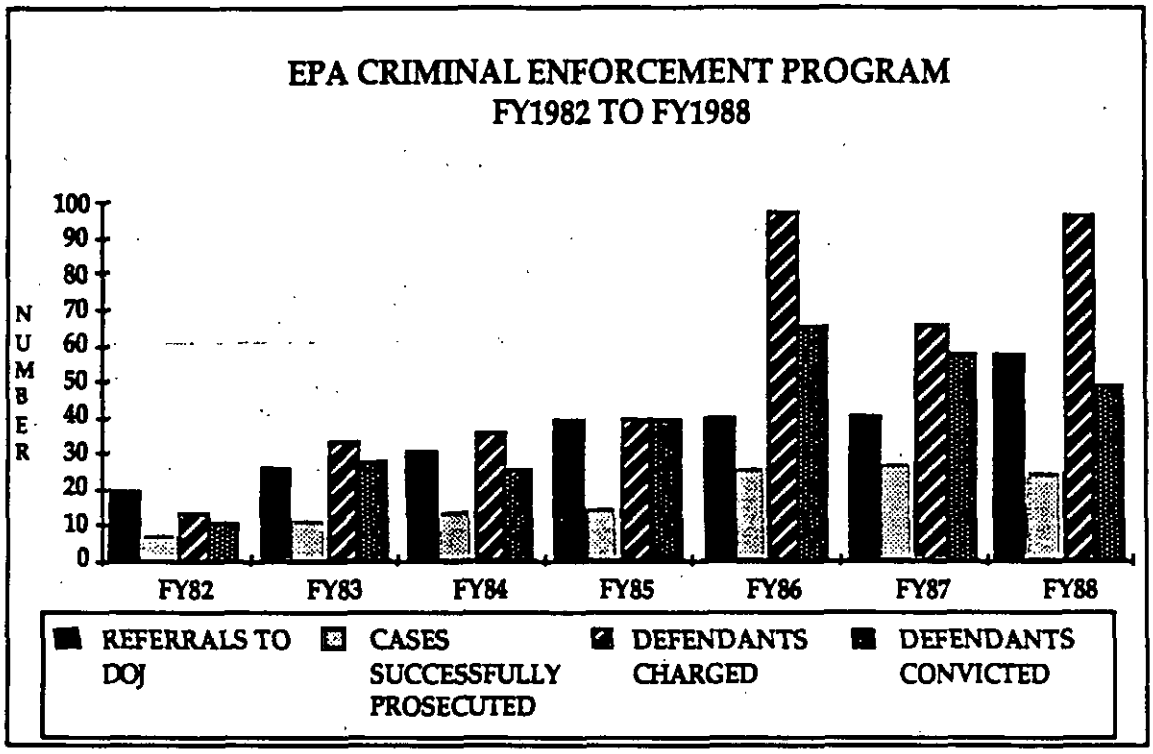



**Illustration 2**

## Administrative Enforcement

Referral of civil and criminal judicial enforcement actions are the performance indicators most commonly looked to by the public and the Congress as they assess EPA's enforcement efforts. While judicial remedies are crucial to EPA's overall success, as time goes on other indicators also need to be evaluated to assess the Agency's effectiveness in enforcing environmental laws and regulations. In the statutes that Congress has enacted or reauthorized over the past few years, EPA has been given expanded authority to use administrative enforcement mechanisms to address violations and compel regulated facilities to achieve compliance or take other corrective actions. Administrative enforcement tools permit the Agency to impose penalties and direct regulated entities to undertake action to correct noncompliance in a less resource intensive way than judicial remedies. As Illustration number 3 shows, EPA enforcement programs are making substantial use of these tools. In FY1988, EPA's enforcement programs issued 3,085 administrative actions. As with judicial enforcement, administrative enforcement activity has been particularly high since EPA instituted internal management improvements in FY1984, with EPA enforcement programs taking 14,638 administrative actions since then. This total represents 43% of all administrative actions taken since the Agency was created.

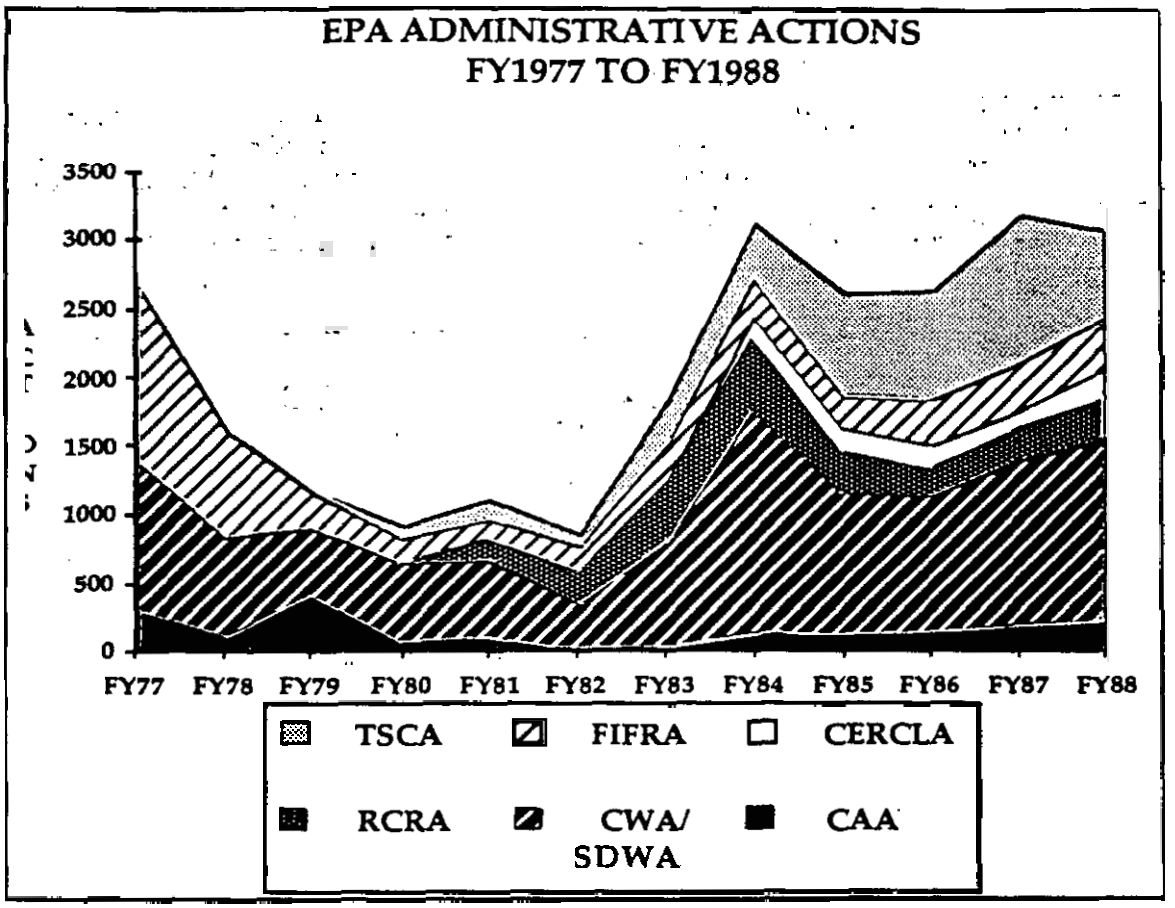



Illustration 3

## Federal Penalty Assessments

To comply with environmental regulations, industrial and governmental institutions must allocate capital resources to install pollution control equipment, and they must provide for the ongoing expenditures necessary to operate and maintain that equipment. Delaying or foregoing these expenditures can permit an economic benefit to accrue to the regulated entity if his or her competitors are making the expenditures necessary to comply. As part of the effort to deter noncompliance, EPA's enforcement programs have developed penalty policies designed to assess penalties which recoup any economic benefit that a noncomplying facility has realized, and assess additional penalties commensurate with the gravity of the violation(s). Since its creation, EPA has imposed $149.9 million in penalties ($106.5 million with civil judicial actions and $43.4 million with administrative actions). Since the upturn in the number of enforcement actions in FY1984, EPA has imposed $71.2 million in civil judicial penalties (67% of all civil judicial penalties) and $39.1 million in administrative penalties (90% of all administrative penalties). The $110.3 million in total penalties since FY1984 represents 74% of all penalties assessed since the Agency was created. In FY1988, records were set in both penalty categories, with $23.9 million in civil judicial penalty assessments and $11.7 million in administrative penalty assessments (these totals do not include the $15 million penalty in the lodged, but not yet filed, consent decree in the Texas Eastern Pipeline case). Illustration 4 graphs the history of EPA's civil judicial and administrative penalty program in terms of the total dollar amount of penalty assessments since FY1977.

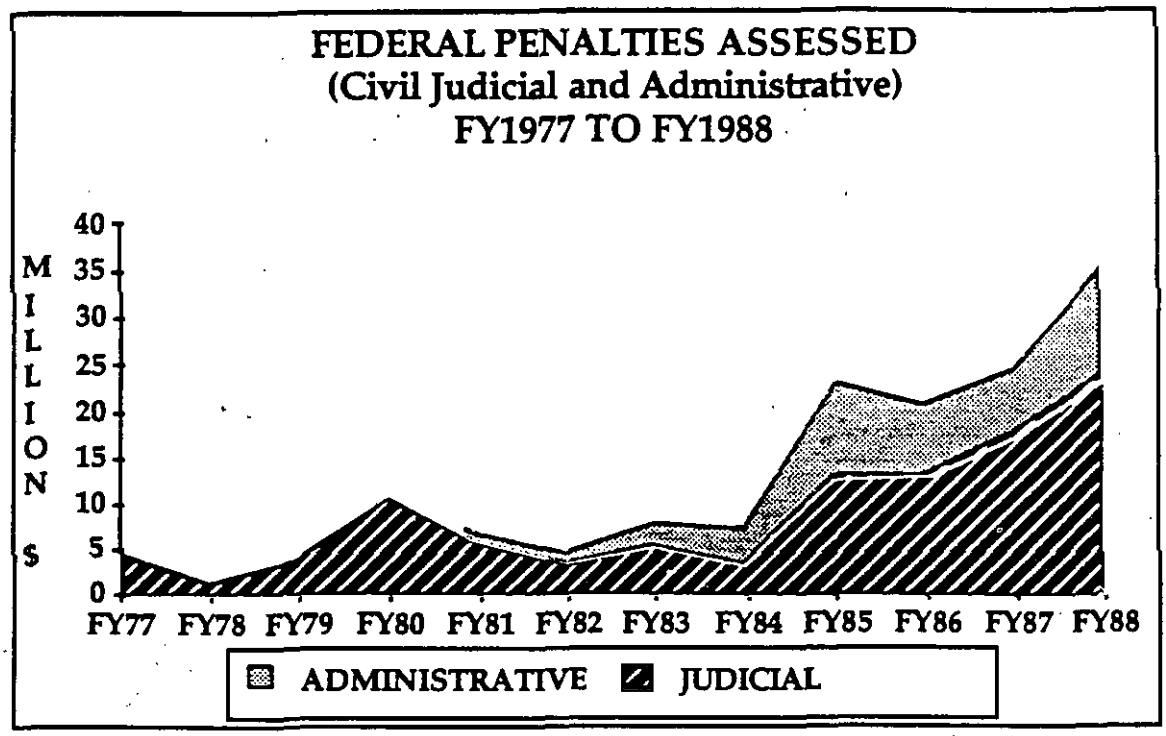



Illustration 4

## Judicial Enforcement-Monitoring Consent Decrees

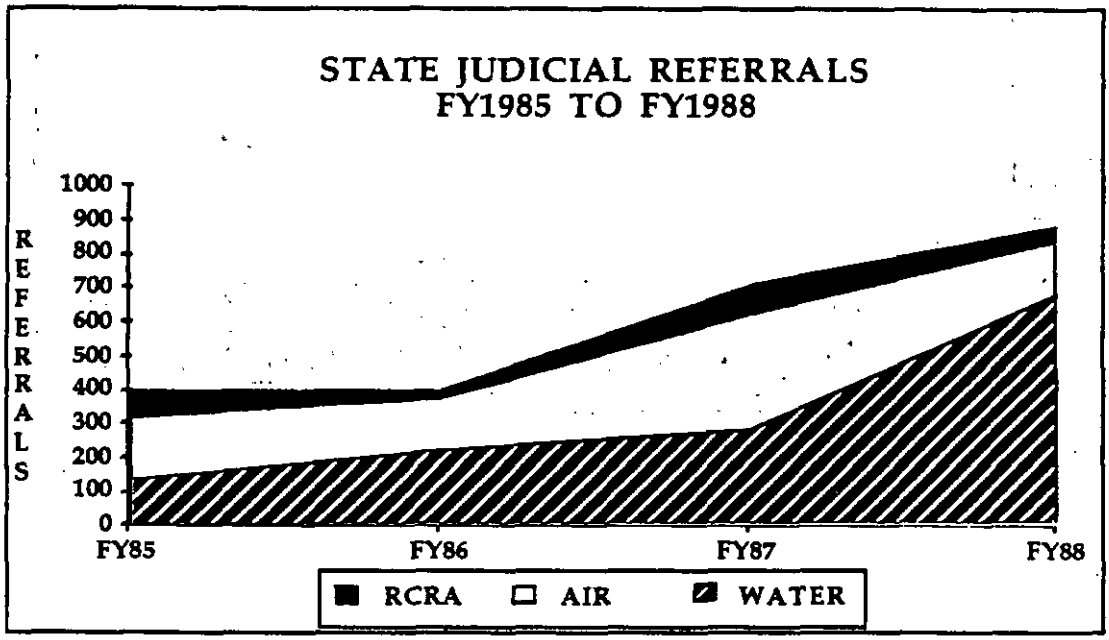
In FY1984, EPA had in place just over 200 judicial consent decrees directing violating facilities to undertake actions designed to achieve compliance with environmental regulations. At the end of FY1988, the Agency reported that over 450 judicial consent decrees were in place and being monitored to ensure compliance with the provisions of the decrees. Where noncompliance with the terms and conditions of the decrees is found, EPA may initiate proceedings with the court to compel the facility to live up to its agreement and seek penalties for such noncompliance. EPA initiated 26 actions to enforce consent decrees during FY1988.

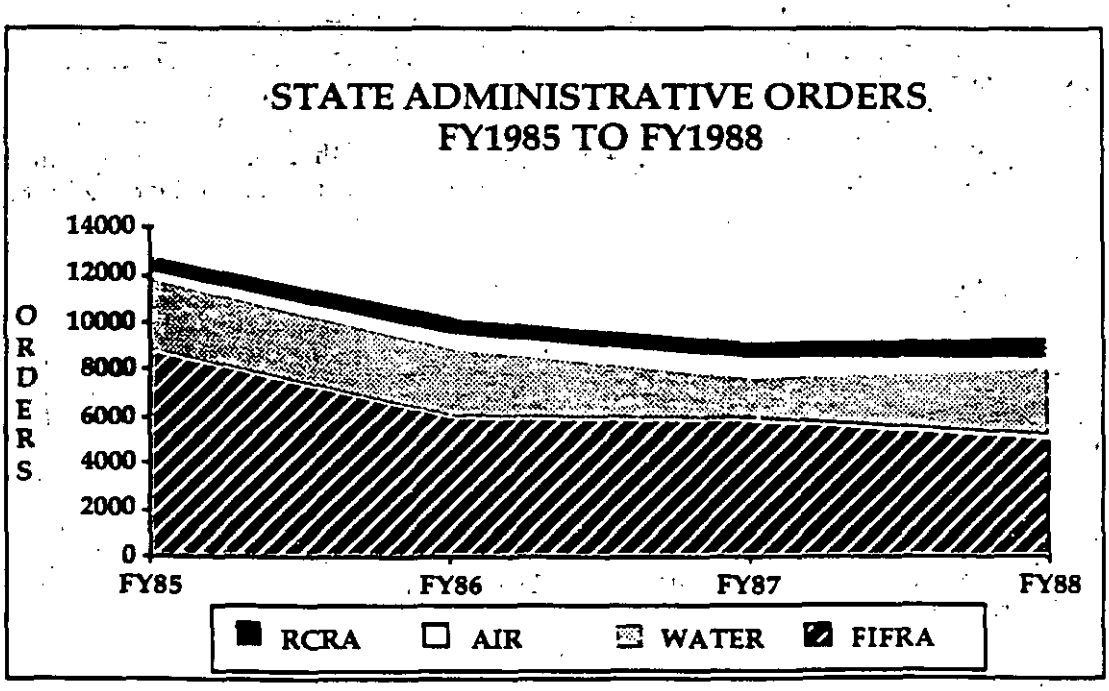
## Contractor Listing

EPA has placed increased emphasis on utilizing its administrative authorities under the Clean Air and Clean Water Acts to bar the Federal government from awarding contracts, grants, or loans to facilities that have demonstrated a pattern of non-compliance with the regulations promulgated under those statutes. This enforcement tool (most commonly referred to as Contractor Listing) was infrequently used prior to FY1986, but EPA's use of this tool has expanded significantly since the Contractor Listing regulations were revised in 1986 and a separate staff was created within the Office of Enforcement and Compliance Monitoring (OECM) to carry out the program. In January 1986, only three facilities were on the Violating Facility List, but at the end of FY1988 that number had grown to 17 facilities.

## State Judicial and Administrative Enforcement Activity

Several hundred thousand facilities are subject to environmental regulation, and the job of ensuring compliance and taking action to correct instances of noncompliance with federal laws is entrusted both to EPA and to the States through delegated or approved State programs. EPA and the States must rely on a partnership to get the job done, with State environmental agencies shouldering a significant share of the nation's environmental enforcement workload. In FY1988, the States referred 904 civil cases to State Attorneys General and issued 9,363 administrative actions to violating facilities. Both of these totals represent increases over the FY1987 performance levels.




Illustrations 5&6

# II. MAJOR ENFORCEMENT LITIGATION AND KEY LEGAL PRECEDENTS

## Clean Air Act Civil Enforcement Stationary Source Program

Asbestec Construction Services v. EPA: The court denied Asbestec's petition for review of a Section 113(a) order issued by Region II for alleged violations of the asbestos NESHAP. The court held that issuance of the order by EPA did not deny Asbestec due process of the law, nor did it deprive the company of a property or liberty interest protected under the Fifth Amendment. Although the order was a "final definitive statement of the Agency's position," the court felt that other factors, notably the government's need for speedy enforcement, weighed against classifying the order as final action subject to judicial review.

U.S. v. Ashland Oil, Inc.: In November 1987, EPA entered into a consent decree with Ashland Oil which calls for the company to pay a $95,000 civil penalty and also institute environmental auditing to ensure compliance with the benzene NESHAP. ***The environmental auditing provision is one of the first "classic" examples of auditing in an air-related consent decree,*** and involves the development of a plan, a review of the plan and actual performance by an auditor, preparation of a report by the auditor, along with a schedule for correcting any deficiencies. The auditor's report is an enforceable part of the decree.

U.S. v. Big Apple Wrecking: On May 19, 1988, a consent decree was entered in this case in which the defendants agreed to pay a total penalty of $260,000, ***the largest penalty in any asbestos NESHAP case to date.*** This case involved multiple and repeated violations of the asbestos NESHAP standard during the demolition of 39 buildings in Naugatuck, Connecticut.

U.S. v. Borden Chemicals: On March 4, 1988, a consent decree was entered settling this case against Borden Chemicals for $1.25 million and extensive injunctive relief. The defendant had violated several different sections of the vinyl chloride NESHAP at its complex in Geismar, Louisiana. A unique feature of the settlement is the payment of $250,000 of the penalty to the Louisiana State University Foundation to be used solely for the purpose of research in the health impacts of hazardous air pollutants, including epidemiological studies. ***The settlement was twice the amount of the largest vinyl chloride settlement previously obtained.***

U.S. v. Conoco, Inc.: This consent decree resolves alleged violations of NSPS Subparts J and GG pertaining to petroleum refineries. The Subpart J violations arose from Conoco's failure to control sulfur dioxide emissions from three new process heaters. The defendant could have achieved compliance simply by segregating its flue gas streams in order to burn only clean fuel at the new heaters while continuing to burn dirty fuels exclusively at its older, unregulated heaters. Instead , in exchange for a 75% mitigation of the $1 million penalty, Conoco agreed to install equipment that will remove sulfur from all of its flue gases, resulting in the reduction of at least 3,250 - 4,500 tons of sulfur dioxide emissions per year. The net after-tax value of Conoco's mitigation project exceeds $1.5 million.

U.S. v. Ford Motor Company: This case, ***which involves the largest penalty paid for violation of volatile organic compound emission limits,*** was settled after the U.S. Supreme Court denied Ford's petition for a writ of certiorari. The Sixth Circuit had held that the United States could enforce the provisions of a federally approved State Implementation Plan that had been purportedly modified by a state court consent order between Ford and state air pollution regulatory authorities. The consent decree, entered on May 9, 1988, includes a certification by Ford that it has closed and permanently ceased operating six noncomplying printing lines. Ford will not resume operation of the lines until it has obtained state operating permits. Also, Ford paid a civil penalty of $1,750,000.

U. S. v. General Dynamics Corp.: In this case, the district court held that the government can sue for injunctive relief in air pollution cases where a contractor operates property owned by the United States. The court also held that the Defense Production Act, which compels contractors to perform despite other contractual obligations, does not immunize defense contractors from violations of the Clean Air Act.

U.S. v. Lenox, Inc.: ***In the first arsenic NESHAP enforcement action filed nationwide,*** a complaint was filed on June 13, 1988, against Lenox, Inc., for violations of the arsenic NESHAP at its plant in Mt. Pleasant, Pennsylvania. The complaint alleges various reporting and recordkeeping violations, and also alleges that the failure to report has prevented EPA from determining whether Lenox is in compliance with the applicable emission limitations.

Navistar International Transportation Corp. v. EPA: The Sixth Circuit affirmed the Administrator's decision finding Navistar (formerly International Harvester) *liable under Section 120 of the Clean Air Act.* In its appeal, Navistar argued that its ten painting lines were either excluded or exempted from regulation. The court rejected all of the petitioner's arguments, deferring in each case to the Agency's interpretation of its own regulations. In addition, Navistar argued that the Notice of Noncompliance it received was insufficient since it lacked two of the referenced attachments which are required under 40 C.F.R. Section 66.12. The court held, however, that jurisdiction to assess Section 120 penalties is conferred upon EPA not by the regulations, but by the Clean Air Act which requires only a reasonably specific notice.

U.S. v. New York City Human Resources Administration, et al.: The New York City Human Resources Administration, Department of General Services, and the City of New York agreed to pay a civil penalty of $200,000 in settlement of this action brought for violation of the asbestos NESHAP during renovation of a city shelter.

U.S. v. Shell Oil Co.: EPA negotiated a consent decree with Shell Oil Company in connection with violations of the NSPS regulations at the Shell refinery and sulfur recovery plant (SRU) in Carson, California. Shell was required by California OSHA regulations to take a portion of its SRU off-line every three years for inspections which would cause a violation of the federal NSPS regulations unless Shell shut down the entire refinery during inspection. To avoid this problem in the future, EPA negotiated a settlement whereby Shell agreed to install a redundant unit at its SRU at an estimated cost of $15 million. In addition, Shell will pay a civil penalty of $66,900.

Solar Turbines, Inc. v. James Seif and EPA: EPA initiated a major enforcement action against Solar Turbines, Inc., for construction pursuant to a Clean Air Act PSD permit which EPA believed Pennsylvania issued without properly requiring Best Available Control Technology (BACT) for NOx. The district court granted the government's motion to vacate an earlier Temporary Restraining Order prohibiting EPA from enforcing its Section 167 administrative order against Solar Turbines Inc., for construction of gas turbines which, in EPA's view, lacked best available control technology. The court concluded that the Section 167 order was a final agency action (***the first such decision by a court)*** and, therefore, judicial review was proper only at the circuit court level. On December 6, 1988, the Third Circuit heard arguments concerning EPA's authority to sue under Section 167 and various jurisdictional questions including whether the order constitutes final agency action. In addition, on December 13, 1988, the district court granted the government's motion to amend the complaint to include a Section 113 claim and agreed to stay further action pending a ruling by the circuit court. This case is likely to set many of the ground rules for PSD enforcement in the future.

U.S. v. Southern Coke Corp.: The defendant agreed to pay $100,000 in this contempt action for violations of an earlier consent decree governing coke battery emissions at Southern Coke's facility. Southern had taken over the coking plant from the bankrupt Chattanooga Coke and Chemicals Corp., which had been a consent decree signatory in an earlier EPA enforcement action. When Southern failed to operate the plant in compliance with applicable consent decree requirements, EPA filed its contempt action. The $100,000 recovery represents almost all of Southern's remaining liquid assets.

Wheeling-Pittsburgh Steel Corp.: On August 11, 1988, the Third Circuit Court of Appeals granted the U.S. motion for a stay pending appeal. In May, the Court for the Western District of Pennsylvania had issued an opinion and order that modified the consent decree which applies to the coke batteries at the Monessen, Pennsylvania, facility. The modifications would allow Sharon Steel, which has purchased the batteries, to operate them without controls for six months while controls are installed. The original consent decree with Wheeling-Pittsburgh required completion of controls in 1985. ***This district court decision raised several important issues, including the viability of EPA's standard "successors and assigns"*** language which is used in most enforcement consent decrees.

On October 12, 1988, the Third Circuit disposed of the appeal in favor of the Government by granting the motion for summary reversal of the May, 1988, order. The Third Circuit's opinion implicitly enforced the "successors and assigns" provision of the consent decree and firmly held that economic considerations were not a permissible basis for modifying the consent decree. Sharon Steel proceeded to install the controls prior to operating the batteries on December 28, 1988, and the District Court approved consent decree modifications agreed to by the Government and Sharon Steel that resolve certain other technical issues relating to Sharon's operation of the installed controls and its achievement and demonstration of compliance with applicable standards.

## Air Mobile Source Program

U.S. v. Bulk Oil: A settlement was reached in December 1987, between EPA and Bulk Oil for a $1.2 million civil penalty and the retirement of 50 million grams of unlawfully created lead rights. This case resulted from an audit conducted earlier in 1987, which uncovered a scheme of misreporting unleaded gasoline as leaded in violation of the lead phasedown regulations. ***This was the largest penalty collected for a violation of this kind.*** The remedial efforts undertaken by Bulk, including the purchase of the 50 million grams of lead rights, were worth between $1.5 million and $2.5 million.

U.S. v. Ford: In a case involving over 103,000 1985-87 model year light-duty trucks, Ford agreed to recall the vehicles and pay a fine of $60,000 to settle an enforcement action based on the manufacturer's failure to produce trucks which complied with their certificates of conformity. The violation involved a warning light designed to remind the vehicle owner to replace the exhaust gas recirculation (EGR) valve after 60,000 miles of use. The EGR valve is an important emissions component in the control of oxides of nitrogen emissions.

Mercedes Benz: After an extensive investigation, a $148,000 settlement was reached between EPA and the auto manufacturer for alleged violations involving failure to report defects which occurred during production and improper applications for certification. The company agreed, as part of the settlement, to implement a compliance manual and employee education program designed to address the concerns raised by the Agency in the case.

## Clean Water Act (CWA) & Safe Drinking Water Act (SDWA) Civil Enforcement

U.S. v. Alaska Gold Co.: On November 3, 1987, Judge Fitzgerald entered the consent decree in this Clean Water Act placer mine case. The company is now subject to a specific compliance program and must pay a civil penalty of $100,000 plus interest. ***This is the largest penalty ever assessed in a placer mine case.***

U.S. v. Arco Oil and Gas Co.: On January 25, 1988, the Federal district court in Colorado entered a consent decree resolving EPA's enforcement action against Arco for unauthorized construction of an underground injection well near Ignacio, Colorado. The decree imposed a penalty of $47,500.

U.S. and Pennsylvania v. Ashland Oil Co.: In the aftermath of a 3.9 million gallon diesel fuel spill into the Monongahela River on January 2, 1988, the U.S. and Pennsylvania lodged a consent decree with the court on July 6, 1988, which addresses a comprehensive clean-up of the site, including soil and ground water remediation, a continuing obligation to perform downstream clean-ups as needed, to fully test all tanks before resumption of operations, to amend its SPCC Plan, reapply for appropriate NPDES Permits, stack test its vapor recovery incinerator, perform an environmental audit, and reimburse the federal government for approximately $680,000 in clean-up oversight expenditures.

U.S. v. Atlas Powder: A consent decree was entered in the Eastern District of Pennsylvania resolving EPA's enforcement case against Atlas Powder, an industrial direct discharger who had been in violation of its Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit. The consent decree imposed a penalty of $840,000.

U.S. v. Chevron Refinery: EPA's lawsuit for violations of NPDES permit effluent limitations was settled in FY1988. Chevron paid a cash penalty of $1,500,000.

U.S. v. Devon Energy Corporation: On October 7, 1987, Judge Brooks entered the consent decree between EPA and Devon Energy Corporation, resolving EPA's enforcement action against Devon for a violation of the underground injection control (UIC) regulations under the Safe Drinking Water Act, ***the first such decree to be entered.*** EPA brought enforcement action against Devon Energy Corporation for failure to notify EPA of its transfer of certain underground injection wells to another party in violation of the new regulations promulgated under the Safe Drinking Water Act. Under the terms of the decree, Devon agreed to pay a $5,000 fine for this violation. EPA also sued the transferee of the wells, Centaur Petroleum Corporation, for other violations of the UIC regulations, and the case against that defendant remains in litigation.

U.S. v. Grace Petroleum: On March 10, the United States lodged in court a settlement in a Region VIII UIC case against Grace Petroleum calling for the payment of a $55,000 civil penalty, ***the largest obtained in a UIC case,*** to date. The case was based on the defendant's conducting unauthorized injection activity. Prior to settlement, the defendant had taken necessary corrective action regarding its operating requirement and had obtained the requisite operating permit.

U.S. v. Inland Steel: On March 9, 1988, EPA and Inland lodged a consent order in the Northern District of Indiana resolving a complaint EPA filed principally to address deficient laboratory practices that violated

Inland's NPDES permit conditions. Inland will pay a $100,000 civil penalty. ***This settlement resolves EPA's first civil action initiated principally to address laboratory procedure violations.*** The resolution demonstrates to other permit holders the importance of submitting accurate effluent information.

U.S. v. Paul V. Kebert, Kebert Construction Company and Kebert Family Partnership: In ***the first jury verdict rendered in a CWA Section 404 wetlands case*** in the aftermath of the Tull decision (see discussion of the Tull case on page 10), a jury returned a verdict of liability in November 1987, finding that defendants had illegally filled 3-1/2 to 7 acres of wetlands without a Section 404 permit. After 1/2 day of trial before the court in September 1988, the defendants consented to the Government's demand for restoration of 6.6 acres of wetlands and a $5,000 civil penalty. The Court will hold the docket open until a Consent Decree incorporating the agreement read into the record can be drafted, executed and approved. Although the Government's costs in proving the case were great, the case proved two important points: that EPA can prevail in jury trials, and that the Government will not abandon a legitimate enforcement action short of an acceptable resolution.

U.S. v. LTV Steel: Of the 12 Region V CWA consent decrees entered in court this fiscal year, the LTV Steel case is particularly noteworthy because it involved a ***settlement with a company currently in bankruptcy.*** The case was brought against LTV Steel Company's plants in Ferndale, Michigan, and Cleveland, Ohio, for failure to meet categorical pretreatment requirements at the two plants. During the negotiations the company implemented the production changes and controls to bring the plants into compliance. The consent decree requires the company to maintain compliance and to pay a fine of $450,000. Of particular note is the fact that the consent decree specified that $300,000 of the fine are post-petition penalties which are immediately due and owing and not subject to bankruptcy proceedings. The remaining $150,000 is considered a pre-petition penalty which will be paid as part of the bankruptcy settlement.

Marine Protection, Research, and Sanctuaries Act Administrative Complaints (MPRSA): Region II issued a series of administrative complaints against nine sewerage authorities and six ocean-going transporters under the MPRSA (the Ocean Dumping Act). The authorities and transporters violated their permits by dumping sewage sludge too quickly and on improper courses to the 106 mile dump site. The penalties proposed total over $1.25 million.

U.S. v. Midway Heights County Water District: In this civil action, the court held that in the context of the Safe Drinking Water Act, "human consumption" of water includes uses such as bathing, cooking, and dishwashing and not merely the use of water for drinking. The court also rejected the defandant's argument that the Government must show that illness has resulted from contamination of a Public Water Supply System. The court held that the widespread contamination of the system with organisms which are accepted indicators of the potential for the spread of serious disease in an untreated water system presents "imminent and substantial endangerment" in the context of the SDWA. This decision was upheld on appeal.

U.S. v. Edward Lunn Tull, et al.: A consent decree was entered in the Eastern District of Virginia resolving the government's claims against Chincoteague Island real estate developer Edward Lunn Tull for violations of the Clean Water Act stemming from his wetlands filling activities on the Island. The consent decree resolves claims regarding several sites on the Island which had been the subject of four previous actions litigated to judgment in favor of the United States, appealed and remanded for trial by jury of the civil penalty claims, pursuant to the U.S. Supreme Court's decision in the first of four cases. The consent decree requires the payment of $25,000 in civil penalties, which have been paid, and the reconnection of a blocked waterway, the removal of tide gates blocking tidal flow into wetlands, the creation of new wetlands, and partial restoration of a filled site.

## NATIONAL MUNICIPAL POLICY

U.S. v. The City of Baton Rouge, Louisiana: A consent decree between the United States and the City of Baton Rouge was lodged on March 3, 1988, and entered by the court on October 6, 1988. Baton Rouge was fined $750,000 for its failure to meet the statutory deadline for secondary treatment as required by its NPDES permit, ***the largest cash penalty assessed to date under the National Municipal Policy.*** The decree also requires construction of treatment facilities costing approximately $288 million.

Boston Harbor Cleanup: In the Boston Harbor case, Region I focused on overcoming obstacles to compliance with court-ordered schedules in three key areas: acquisition of staging areas for use during the upcoming construction of the new treatment plant, the program for management of sludge, and relocation of the prison on the site chosen for the new treatment plant. During FY1988, the Massachusetts Water Resources Authority (MWRA) reached an agreement allowing use of the Quincy Shipyard as a staging area on the South Shore of Boston, and leasing a site on the North

Shore. The MWRA also reached agreement with the City of Quincy on processing sludge at the shipyard from 1991-1995, a key breakthrough for the sludge management program. In addition, the Region successfully negotiated a schedule of interim steps to ensure meeting the December, 1991, deadline for terminating sludge discharges. With respect to prison relocation, the district court issued an order requiring the relocation by December, 1991. Lastly, the Region resolved the issue of past penalties. The defendants agreed to pay a cash penalty of $425,000 and place $2,000,000 in a Boston Harbor trust fund for mitigation projects.

U.S. v. Central Valley, Utah: A consent decree was entered in the district court for the district of Utah to resolve the complaint against the Central Valley Water Reclamation Facility Board and the seven local governmental units in Salt Lake County, Utah, that form the Board. The complaint alleged NPDES violations including effluent limit violations, failure to submit approvable pretreatment programs, occurrence of prohibited bypasses, and reporting violations. The consent decree requires that Central Valley be in compliance with all permit effluent requirements except nitrogen/ammonia by July 1, 1988, and to be in compliance with the nitrogen/ammonia standard by July 1, 1989. The agreement also requires that four satellite treatment facilities connect into Central Valley by July 1, 1988, and that Central Valley submit a regional Pretreatment program.

U.S. v. Hudson County, New Jersey: A consent decree was entered on June 2, 1988, to resolve a civil complaint against Jersey City, New Jersey. Settlement negotiations with the four other municipalities in Hudson County (Bayonne, Hoboken, West New York, and North Bergen) are continuing. The complaints against the five municipalities alleged serious and long-term violations of the CWA for the discharge of untreated and undertreated sewage and wastewater in to the waters surrounding Hudson County, including the Hudson River, Newark Bay, and the Kill Van Kull. In the Jersey City consent decree the Government obtained a penalty of $500,000 and an agreement that all wastewater flows will be diverted to the Passaic Valley Sewerage Authority by December, 1988, to receive adequate pollution treatment before discharge.

U.S. v. Key West, Florida: A consent decree was lodged in the Southern District of Florida on July 18, 1988, to resolve the government's civil complaint against the City of Key West, Florida. The complaint alleged that Key West did not have a treatment system in operation at the time of the complaint and that the City was discharging approximately 6 million gallons a day of raw sewage into the Atlantic Ocean. In addition, the complaint alleged that the City was in violation of six administrative orders and a State Consent Judgment. The consent decree requires the City to select a site, complete design and construction of a primary and secondary treatment facility, and achieve compliance with applicable pollution discharge limits. A civil penalty of $600,000 and requirements to rehabilitate various parts of the sewer systems are also required by the decree.

U.S. v. PRASA: EPA and the Governor of Puerto Rico announced an agreement on April 20 resolving federal enforcement claims against the Puerto Rico Aqueduct and Sewer Authority (PRASA) for violations of federal water pollution control requirements at a number of sewage treatment facilities in the Commonwealth of Puerto Rico. The agreement would require PRASA to pay a $2 million civil penalty for past violations and deposit $7.9 million in an escrow account to fund various corrective action projects to address deficiencies. The agreement would revise an existing court order by establishing new schedules under which PRASA would install or upgrade water pollution control equipment at its facilities and implement a program for properly treating pollutants from industrial wastewater discharged into a number of sewage treatment facilities. The agreement contemplates that the Commonwealth will help finance these pollution control improvements through a newly-created "Puerto Rico Infrastructure Finance Authority" (PRIFA). The agreement requires enactment by the Puerto Rican legislature.

## Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) & Resource Conservation and Recovery Act (RCRA) Civil Enforcement

All Regions Chemical Lab, Inc.: On September 30, 1988, Region I issued ***the first civil administrative complaint in the nation under Section 109 of CERCLA*** (for a Section 103 violation) and Section 325(b) of the Emergency Planning and Community Right-to-Know Act of 1986 (Title III). EPA alleged that All Regions Chemical Lab, Inc., of Springfield, Massachusetts, had violated Section 103 of CERCLA by failing to notify the National Response Center of a release, and Section 304 of Title III by failing to provide written follow-up emergency notice to the local community emergency coordinator. The Region assessed a civil penalty in the amount of $25,000 for the violation of Section 103 of CERCLA. The Region also assessed a penalty in the

amount of $25,000 for the first day of the Title III violation and $500 per day for each day thereafter until the required notice is filed.

U.S. v. BFI-CECOS: On August 12, 1988, the consent decree for United States v. Browning-Ferris Industries, Chemical Services, Inc., and CECOS International, Inc., (BFI-CECOS) was lodged with the U.S. District Court for the Middle District of Louisiana. Under the decree, the defendants will pay $2.5 million in settlement of this action, brought for various RCRA violations at the defendants' commercial hazardous waste treatment, storage, and disposal facility in Livingston, Louisiana. ***The settlement represents the highest penalty ever obtained in a RCRA judicial action.*** In addition, the defendant will conduct certain measures to come into full compliance with RCRA, including the installation of a number of groundwater monitoring wells, and will conduct an environmental audit for the facility.

Cannons Engineering Superfund Site: Two consent decrees were lodged on August 3, 1988, settling the Cannons Engineering Superfund case between the government and representatives of several groups of Potentially Responsible Parties (PRPs) associated with the case. This comprehensive settlement with the major parties in the case, in combination with earlier de minimis settlements and Administrative Consent Orders, will result in recovery of $48.1 million out of the $58.5 million expected to be incurred in connection with the four Cannons case sites.

The settlement calls for the PRPs to perform remaining response actions at three of the sites involved in the case, including a removal action at the Cannons Engineering Corporation Plymouth, Massachusetts, site, the remedial action specified in the Record of Decision for the Cannons Engineering Corporation Bridgewater, Massachusetts, site, and a remedial action consistent with an impending proposal to Amend the Record of Decision for the Tinkham's Garage site in Londonderry, New Hampshire. The value of these response actions is estimated to be $16.1 million. In addition, the PRPs will pay a net of approximately $17.1 million in past costs and settlement premiums in connection with the fourth site in the case, the Gilson Road site in Nashua, New Hampshire. This comprehensive settlement accompanies two earlier de minimis settlements in the case (including a settlement covering 313 small volume generators), which are expected to recover an additional $13.4 million. Also, three previous administrative consent orders have been negotiated with various PRPs in the case, resulting in performance of $1.5 million in response actions at three of the sites.

Connecticut Loss of Interim Status Cases: The Agency successfully litigated and settled three RCRA Loss of Interim Status (LOIS) cases involving electroplating facilities located in Connecticut. In Stanley Plating, the consent decree requires closure of Stanley's land disposal facilities and payment of $230,000 in civil penalties. In Susan Bates, the decree requires the company to implement groundwater monitoring at its previously-closed surface impoundments and to pay a civil penalty of over $197,000. The Plainville Electroplating settlement also resulted in a penalty of $230,000 as well as closure of the facility's surface impoundments. ***The Stanley and Plainville penalties represent the largest civil penalty amount collected in a RCRA LOIS case to date.***

U.S. v. Conservation Chemical Company: In April 1988, the court approved a consent decree settling this CERCLA Sections 106 and 107 and RCRA Section 7003 action. The consent decree requires the four original generator defendants, along with contributions from the site owner/operator, to remediate the Conservation Chemical site and provide reimbursement to the Superfund of over $2.1 million. Site remediation, involving site surface cleanup and construction of a groundwater extraction and treatment system, is expected to cost over $20 million. This settlement concludes one of the longest running hazardous waste cases. Since it was initiated in 1980 under RCRA (and later amended to include CERCLA counts), the litigation of this case has resulted in a number of favorable legal precedents on constitutional, joint and several liability, and imminent and substantial endangerment issues.

U.S. v. Hudson Refining Co., Inc.: A consent decree was entered into to resolve a complaint filed against Hudson Refining Co., Inc., Cushing, Oklahoma, pursuant to Sections 3008(a) and (g) of RCRA. At the time the complaint was filed, Hudson Refining Co., Inc., was in bankruptcy, having filed a petition in January 1984 for Chapter 11 Bankruptcy Protection. The final consent decree embodied an earlier partial consent decree that required Hudson to come into compliance with specified interim status standards, pay $100,000 in settlement of penalty claims, and complete an investigation of its entire Cushing, Oklahoma, facility pursuant to RCRA Section 3008(h).

The final Consent Decree and Workplan established corrective action tasks and cleanup standards for remediation of hazardous waste/hazardous constituents releases at the facility. It also provides a mechanism to guarantee payment of up to one million dollars and provides the Defendant an ongoing obligation to meet RCRA financial assurance requirements. Because of its bankrupt status, Hudson's commitment of

over two million dollars for investigation and cleanup of the facility represents an important prioritization of environmental claims and liabilities in a bankruptcy proceeding. The settlement is also important in that it is one of the first requiring both RCRA facility investigation and corrective measures.

U.S. v. Inmar Associates, Inc.: In mid-March, a consent decree was negotiated with Inmar Associates to resolve an action for failure to comply with a CERCLA Section 106 order issued to Inmar by EPA. The consent decree was lodged in district court. The decree requires that Inmar make a lump sum payment to the United States of $545,000 shortly after the decree is filed. This litigation is significant in that it resulted in ***the largest penalty ($315,000) imposed by EPA upon any party pursuant to Section 106(b) of CERCLA to date,*** and resulted in a 100% reimbursement to EPA of its response costs (approximately $152,000) plus interest.

US v. IT Corporation: A consent decree was entered into under RCRA Section 3008(a) for the IT Corporation's Baker facility in Martinez, California, in ***the first case in the nation that enforced Sections 3015 and 3004(o) of RCRA*** (minimum technology requirements for surface impoundments). IT Baker was required to close several non-complying surface impoundments. In addition, IT Baker agreed to pay a $260,000 civil penalty.

Love Canal Site: By decision and order dated February 23, 1988, the court granted the governments' motion for partial summary judgment under Section 107 of CERCLA finding Occidental Chemical Company strictly, jointly, and severally liable for remedial costs recoverable under that statute. The costs were incurred by the United States and the State of New York in connection with the release and threatened release of hazardous chemicals from the Love Canal landfill, including those recoverable costs incurred prior to the enactment of CERCLA.

U.S. v Manville Sales Corporation: On March 18, 1988, the District Court for the Northern District of Illinois, entered a consent decree settling litigation between EPA and Manville Sales Corporation, Waukegan, Illinois. The consent decree requires Manville to implement Remedial Design/Remedial Action (RD/RA) as contained in the Record of Decision (ROD), with the estimated cost of the RD/RA estimated to be $5 million. The decree also requires Manville to pay all past and future oversight costs, including approximately $100,000 of past EPA indirect costs. The Manville facility is a manufacturing plant with a 56 acre, 30 feet high asbestos scrap pile on the premises. This pile is immediately adjacent to Lake Michigan and Illinois Beach State Park, an ecologically-sensitive preserve. Manville has been disposing of scrap materials containing asbestos at the facility since 1922. Atop the pile is a roadway system, a 33 acre wastewater settling basin, a system of waterways leading to the basin, and three disposal pits, including a friable asbestos pit. The primary feature of the ROD consists of placing a 24-inch cover on scrap waste materials deemed thick enough to prevent "freeze-thaw" effects or "up-freezing" of asbestos particles for a minimum of 100 years.

McAdoo Site - Kline Township, Pennsylvania: EPA entered into a mixed funding consent decree with 69 PRPs to clean up the McAdoo Kline Township Superfund site. The Decree was entered by the U.S. Federal District Court for the Eastern District of Pennsylvania in June 1988. The United States also filed suit against nine non-settling parties in June, 1988, to recover EPA's past costs ($900,000) and mixed funding expenses. The McAdoo Site is approximately eight acres. The site and adjacent areas were used extensively for deep and strip mining, and for a period of four years was used as a facility to incinerate and process industrial wastes. The owners abandoned the site in 1979 leaving 7,000 drums of waste on site and significant soil contamination. In 1981 and 1982, PRPs removed the estimated 7,000 drums from the site. A subsequent RI determined that high levels of organic soil contamination remained in the site soils. In the settlement, 69 of 93 PRPs agreed to perform the RD/RA which entails a mine subsidence study, additional soil sampling program and a determination if residual soil contamination exceeds soil criteria established by EPA. EPA will proceed to judgment against viable Non-Settling PRPs for past cost and of oversight costs.

U.S. v. Northside Sanitary Landfill (NSL): This access case was filed in federal district court on February 12, 1988. This case is notable from other access cases in that the NSL is an ongoing landfill operation, and EPA's requests for access to perform pre-design tasks related to the remedy for the site includes permanently closing down the business.

Pepper Industries, Inc.: A RCRA administrative settlement under Section 3008(a) was reached with the owners of the Pepper Industries, Inc., facility in Ewa Beach, Hawaii. Under the terms of the agreement, the owners of the underlying realty, the Estate of James Campbell and an intermediate lessee/lessor holding a long-term leasehold interest at the Pepper facility, will perform a RCRA closure at the site. The operator of the facility, Pepper Industries, filed for bankruptcy in 1984 and defaulted on its reorganization plan in 1986. Under the reorganization plan, Pepper was to fund its closure trust fund. Recently, Pepper was convicted of making a false statement to the federal government concerning disposal of hazardous waste for the U.S. Navy. Pepper's President is currently serving a jail sentence and the

company will likely be forced into total liquidation. ***This settlement is significant in that EPA was able to obtain a clean up commitment for a RCRA facility from absentee owners who had no contact with the day-to-day operations of the hazardous waste facility.***

Re-Solve Settlement: On March 4, 1988, Region I proposed a Nonbinding Preliminary Allocation of Responsibility (NBAR) under Section 122(e) of CERCLA for use in the Remedial Design/Remedial Action special notice negotiations for the Re-Solve site in North Dartmouth, Massachusetts. ***This was the first NBAR in the country.*** The NBAR was prepared because the issue of how to allocate the cleanup costs for PCBs, which were disproportionate to cleanup costs of the other wastes at the site, had caused a division among the approximately 320 PRPs. Negotiations based on the NBAR produced an agreement in principle in mid September, 1988. Under the settlement, the government is expected to recover $9.2 million in past costs spent at the site and receive $23.3 million toward the cleanup of the Re-Solve site.

Rocky Mountain Arsenal, Denver, CO: On February 1, 1988, the consent decree, signed by the Army, EPA, the Department of the Interior, the Agency for Toxic Substances and Disease Registry, DOJ and Shell Oil Co., was lodged in the U.S. District Court for the District of Colorado. The decree resolves a 1983 civil action between the Army and Shell and requires performance of 13 interim response actions and an on and off-post RI/FS and remedy. The Army estimates the cleanup will cost between $750 million and $1 billion.

U.S. v. Seafab Metal Corporation: On June 2, 1988, EPA obtained Summary Judgment against Seafab Metal Corporation of Seattle for its failure to comply with a Federal Administrative Order issued under Section 3013 of RCRA. ***This is the first time that a Federal court has compelled a defendant to comply with the terms of Section 3013 based solely on the administrative record established when the Order was issued.*** The Order required Seafab to begin monitoring, testing, and analysis to determine the nature and extent of hazardous waste contamination, and to report the results to EPA. Seafab is engaged in lead fabrication and occupies a 10-acre site that was previously used for reclamation of lead from automobile and industrial batteries. Information indicated that the soil at this site was heavily contaminated with lead, arsenic, cadmium, and zinc.

Section 3008(h) Consent Order for SCA, Model City, New York: SCA entered into a Section 3008(h) Consent order with EPA on September 6, 1988. The Model City facility has operated since 1942 and has been used as a hazardous waste management facility since 1972. Waste management activities have occurred on 630 acres of the site, and current facility operations include landfilling, aqueous waste treatment, tank storage, surface impoundments, fuel blending, transformer decommissioning, and container storage and handling. Pursuant to the 3008(h) Consent Order, SCA must conduct interim measures, multi-media investigations, SWMU characterization, and an assessment of the risk posed by the contamination.

U.S. v. Seymour Recycling Corp., Seymour, IN: On August 17, 1988, the U.S. lodged a consent decree settling a CERCLA action in the U.S. District Court for the Southern District of Indiana. The consent decree concluded nearly ten years of litigation and required the settling defendants to perform remedial actions at the site at an estimated cost of $15.5 to $18 million and to reimburse the government for $6.5 of its $9.3 million in past costs (to be offset by approximately $6.5 million in the Seymour settlement trust fund which is comprised of proceeds from a previous cashout settlement).

U.S. v. Smith International: ***In the first CERCLA case nationwide in which the U.S. has settled with a bankrupt generator for future costs,*** EPA reached a settlement in the Smith International bankruptcy proceeding associated with the site. EPA had filed a proof of claim regarding Smith's environmental liabilities at several sites, including the Region IX Operating Industries site. The settlement provides for a $100,350 payment immediately and a total of $5 million over time.

South Carolina Recycling and Disposal, Inc. Site: On September 7, 1988, the United States Court of Appeals issued its decision in U.S. v. Monsanto regarding the South Carolina Recycling and Disposal, Inc. (SCRDI) site. This CERCLA action was brought against several generators of hazardous substances that were sent to the SCRDI Bluff Road site in Columbia, South Carolina, and against several owners and operators of the site. The action sought recovery of costs incurred by the government in cleaning up the Bluff Road site. In a landmark decision, the district court granted the United States' motion for summary judgment on the issue of liability. In a subsequent ruling, the district court held defendants liable for past response costs of over $1.8 million. The district court declined, however, to award prejudgment interest. The defendants appealed the liability ruling, and the government filed a cross appeal on the prejudgment interest ruling. The court of appeals affirmed the district court decision on CERCLA liability, holding the landowner and generator defendants jointly and severally liable for the government's response costs. In addition, the court of appeals vacated the district court's decision not to award the government prejudgment interest, and remanded the issue to the district court for reconsideration.

U.S. v. T & S Brass and Bronze Works, Inc.: On January 27, 1988, the U.S. District Court for the District of South Carolina entered the final order in United States v. T & S Brass and Bronze Works. ***The case was the first, and so far only, "Loss of Interim Status" (LOIS) case to go to trial.*** The court ordered T & S Brass to pay $194,000 in civil penalties and to comply with all applicable RCRA closure and post-closure requirements.

Trans World Airlines, Inc.: In FY1988, pursuant to a consent order issued by Region VII under Section 3008(a) of RCRA, TWA agreed to pay a civil penalty in the amount of $100,000. TWA also agreed to submit closure and post-closure plans; install and operate groundwater monitoring; perform environmental audits at TWA's major facilities located at the St. Louis Lambert Field Airport, the New York Kennedy Airport, and the Los Angeles Airport; assess compliance with applicable federal, state and local environmental laws; and engage in specified environmental enhancement projects.

Tybouts Corner Landfill Superfund Site: EPA reached agreement with seven PRPs involved in the Tybouts Corner Landfill Superfund litigation in a mixed funding settlement under which RD/RA operations at the site in New Castle County, Delaware, will be privately conducted. Under the terms of the settlement, the PRPs will undertake design and construction of a remedy selected by EPA in a Record of Decision dated March 6, 1986, and which will involve consolidation of two landfills, construction of a multi-layer cap to eliminate vertical infiltration into the remaining landfill, installation of a sub-surface drain system to prevent lateral migration of groundwater through the landfill, and implementation of a pump-and-treat system designed to address an off-site contaminant plume. Estimates place the cost of this remedy at between $20 million and $60 million. The settlement terms require the signatories to contribute a total of 93% toward the costs of the remedy. Further, EPA is reviewing four de minimis consent decrees executed by fourteen third party defendants in the Tybouts litigation. The de minimis settlements, when finalized, will generate approximately $1.73 million. The Government's recovery between the main and de minimis settlement is approximately 92.3%. These developments could bring to an end almost two years of negotiation between the Government and the PRPs to resolve a lawsuit filed in connection with the Tybouts site in 1980. The site is ***ranked number 2 on EPA's National Priorities List*** and is designated by Delaware as a top priority site.

## Toxic Substances Control Act (TSCA)l & Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Civil Enforcement

U.S. v. Alyeska Pipeline Service Company: On January 5, 1988, the U.S. Court of Appeals handed down an important decision of first impression upholding a lower court ruling that EPA had the right to use TSCA subpoena authority to investigate allegations of toxic chemical mishandling in Valdez, Alaska. The appeals court agreed that TSCA authority may be used to investigate all chemical substances, not just Polychlorinated Biphenyls (PCBs) or imminently hazardous substances as Alyeska argued, and that EPA can investigate merely on suspicion that the law is being violated, or even if it wants assurance that it is not.

This decision is very significant to EPA's Enforcement program for several reasons. First, the Court of Appeals rejected Alyeska's claim that EPA was using TSCA for an improper purpose, i.e., to investigate CWA violations, citing an earlier Ninth Circuit decision that "an independent regulatory administrative agency has the power to obtain the facts to determine whether it has jurisdiction over the matter sought to be investigated." In addition, the court held that EPA "need not first allege a violation of the law before it can investigate," since the Administrator has the authority to decide which environmental law is appropriate to investigate individual cases. Second, the court recognized that where Congress has granted the authority to investigate, and EPA follows appropriate procedures, subpoenas for evidence relevant and material to the investigation will be enforced.

BASF Corporation: BASF Corporation and its Inmont division agreed to pay a $1.3 million penalty for importing or processing 11 new chemicals substances without first notifying EPA. Notification to EPA is required so that it can evaluate new chemicals' potential to harm health or the environment. The settlement also requires BASF to conduct a comprehensive TSCA compliance audit of 151 of its facilities, and to conduct training sessions for employees in the U.S. and West Germany. In the first settlement agreement of its kind, BASF is required to certify compliance with TSCA at the end of the audit period. In a separate settlement, BASF agreed to pay an additional $82,500 penalty for notification violations involving 10 shipments of chemicals in 1984 and 1985.

Boliden Metech v. U.S.: On September 20, 1988, U.S. District Court for Rhode Island issued ***the first district court decision since the enactment of TSCA in 1976 to address the use of a TSCA administrative search warrant.*** The opinion and order supports the Agency's authority to obtain administrative search warrants under TSCA, and by inference other environmental statutes, giving the Agency the authority to inspect and use an ex parte administrative search warrant. The opinion applies the reasoning of the Supreme Court's decision in the Clean Air Act aerial surveillance case, Dow Chemical v. U.S. In this case the court held that because EPA has the explicit authority to enter facilities to make inspections under the Toxic Substances Control Act; the Agency has the implied authority to seek an administrative search warrant to carry out effectively the purposes of this statute.

To develop additional data on the extent of PCB contamination at the site and to document PCB releases, EPA attempted to inspect the site in January, 1988. Boliden refused to allow the inspection and EPA obtained a search warrant. The company then sought an injunction in the District Court of Rhode Island asking that the search warrant be declared illegal and to have the court direct the EPA to return all of the samples obtained during the inspections. The company also asked the district court to declare that EPA lacks the authority to obtain search warrants under TSCA because the statute does not explicitly state such authority. Boliden also challenged EPA's use of an ex parte warrant stating that to allow the Agency to get such a warrant infringed upon Boliden's Fourth Amendment rights. It proposed that it was necessary for the company to have an opportunity to express its position before a warrant was issued to give it an opportunity to influence the type of investigation procedures that would be authorized by the court for EPA to use.

The court denied the argument stating that such an adversarial proceeding would "deny the EPA the element of surprise" and force a presiding magistrate to make "determinations outside his field of expertise." It stated that such a "pre-hearing, full-blown adversarial proceeding" would cause delay that would frustrate the "public purpose underlying TSCA." The court also declined to interfere with the collateral administrative civil penalty action then pending before an EPA Administrative Law Judge , finding it had no jurisdiction.

DeLonghi America, Inc.: This action concerned the illegal import, sale, distribution in commerce and export of oil-filled portable electric space heaters from Italy by DeLonghi. The violations were initially discovered by Environment Canada. EPA tests confirmed that several shipments of heaters contained oil contaminated with high levels of PCBs. The import of PCBs and PCB items was banned in 1978. Since these heaters were sold in commerce for home use, EPA considered the violations to be serious. EPA issued a civil administrative complaint for the assessment of a large penalty for these violations. DeLonghi entered into a consent agreement with the Agency on June 8, 1988. The agreement requires DeLonghi to pay a penalty of $500,000 for the illegal import and export. In addition, DeLonghi will send out notices to 70,000 warranty card holders, informing them that certain of heaters may contain PCBs. DeLonghi will pay for the disposal of units returned to the retailer. A toll free phone number to assist consumers and retailers with questions about the handling and disposal of these appliances will be set up. A quality assurance program to ensure that future imports are PCB free will also be established.

3M Company: On September 2, 1988, an administrative civil complaint was issued against the Minnesota Mining and Manufacturing (3M) Company of St. Paul, Minnesota, assessing a $1,394,500 proposed penalty for violations of Sections 5 and 13 of TSCA. The violations were voluntarily disclosed by 3M. EPA is citing the company with failing to notify EPA prior to the importation of two chemical substances that were not on the TSCA 8(b) Inventory list. The complaint also cites the company for falsification of certified statements that were provided to the district director at the port of entry representing the true compliance of the chemical substances.

Orkin Exterminating Company: In this FIFRA administrative action, Judge Yost held that Orkin's use of "Orkill", a registered pesticide, constituted misuse of a chemical that was "inherently extremely hazardous" and imposed the maximum proposed penalty of $5,000. The Judge had found that testimony for the government to be "uncontroverted." In this case, the customer and family were forced to permanently vacate the home because of chemical contamination.

U.S. v. Texas Eastern Transmission Corporation: On June 6, a consent decree in the Agency's enforcement action against Texas Eastern Transmission Corporation, d/b/a Texas Eastern Gas Pipeline Company was lodged with the District Court for the Southern District of Texas. The precedential consent decree encompasses ***the largest single settlement ever obtained by the United States against one entity for violation of an environmental statute.***

The consent decree requires Texas Eastern to pay a civil penalty of $15 million dollars, and to characterize and remediate 89 sites located in fourteen states at an estimated cost of $450 million. In addition, Texas

Eastern is required to reimburse the Agency for past and future costs related to the investigation and cleanup, and to conduct a company-wide audit of pipeline facilities to correct PCB Rule violations.

## Criminal Enforcement - All Statutes

U.S. v. Arcangelo, et al. (RCRA/CERCLA): On June 24, 1988, a 15 count *Racketeer Influenced Corrupt Organization statute (RICO)* indictment was unsealed. Two of the counts charged Charles and James Arcangelo with a RCRA disposal violation and a notification violation under CERCLA in connection with the disposal of mercury in North Haven, Connecticut. This case represents the *first EPA joint investigation with the Department of Justice Organized Crime Strike Force.*

U.S. v. Argent Chemical Laboratories, Inc. (FIFRA): On January 14,1988, in the United States District Court in Seattle, Washington, Argent Chemical Laboratories, Inc., Eliot Laurence Lieberman, its chief executive officer, and Beatriz Faith Shanahan, its vice-president, entered guilty pleas to Federal criminal charges relating to the illegal distribution of pesticides and veterinary drugs used by commercial fish farms and the aquaculture industry. Argent is headquartered in Redmond,Washington, and promotes itself as the nation's largest producer and seller of aquatic pesticides. In pleading guilty, Argent became *the first pesticide manufacturer, rather than a pesticide distributor and/or applicator, to be successfully prosecuted by EPA under FIFRA criminal provision.*

In 1982, the State of Washington and the EPA advised the defendants, in connection with a Stop Sale Order concerning Argent's sale of its unregistered algicide, Copper Control, of the federal requirements for the registration of all pesticide products. Nonetheless, EPA investigators determined that the defendants continued their sales of Copper Control and other unregistered pesticides produced by the company. While engaged in such sales, Lieberman, on January 20, 1985, submitted a written affidavit to state and federal authorities falsely asserting that Argent had not produced or sold any unregistered pesticide products. In conjunction with the FIFRA violations, the government also established that the defendants were engaged in the interstate sale of misbranded veterinary drugs in violation of the Federal Food, Drug and Cosmetic Act (FDCA), and that Argent falsely reported through Lieberman to the FDA that Argent was not manufacturing and distributing one such drug when in fact it was doing so.

U.S. v. Chem-Wood Treatment, Inc. (RCRA): On June 2, 1988, a federal grand jury in Honolulu, Hawaii returned a one-count RCRA indictment against Chem-Wood Treatment, Inc., a wood preservative treatment firm, and Erle Kitagawa, its vice-president and general manager. The count charges that the defendants from July 25, 1985, until September 21, 1986, knowingly stored a hazardous waste, the pesticide copper chromium arsenate, used in the company's wood treatment process, without having a required permit.

On July 25, Chem-Wood Treatment Company and Erle Kitagawa were sentenced in the U.S. District Court in Hawaii after both had previously pled guilty to the criminal charge of the illegal storage of hazardous wastes. Chem-Wood received a $25,000 fine and Kitagawa a $5,000 fine plus 100 hours of community service. The court placed Kitagawa on three years probation and required him to see that the additional million dollars needed for cleanup of the site is expended for that purpose.

U.S. v. Commercial Metals Co., Inc. d/b/a Karchmer Iron and Metal Company, Inc., Harold Belcher of Oklahoma and James Vermillion of Springfield, Missouri (RCRA): On July 27, 1988, the Federal Grand Jury in Springfield, Missouri, returned a six count indictment naming the above parties. According to the indictment, Commercial Metals Co., et al., conspired with each other and with other persons from on or about January 1983, up to and including May 27, 1987, to violate the environmental laws of the United States by disposing of hazardous waste by negligently discharging pollutants from a point source in navigable waters of the United States, and by disposing of hazardous waste without first obtaining a federal permit for such disposal, knowing at the time that they thereby placed another person in imminent danger of death or serious bodily injury, their conduct in the circumstances manifesting extreme indifference for human life. If convicted of the charges, Commercial Metals, Inc., could be fined up to $2,100,000 together with costs of restitution and clean-up. If convicted of the charges, Harold Belcher could receive a sentence of up to 14 years imprisonment and/or a fine of not more than $600,000. If convicted of the charges, James Vermillion could receive a sentence of up to 15 years imprisonment and/or a fine of not more than $625,000.

U.S. v. Gardinier, Inc. (CWA): On August 3, 1988, Gardinier, Inc., a Tampa-based phosphorus mining operation, pled guilty to a one-count information filed that day charging the company with the failure to report to the National Response Center, in violation of the CWA, a spill of approximately 40,000 gallons of phosphoric acid into the Alafia River, which flows into Hillsborough Bay, a navigable waterway connected

with Tampa Bay. The spill occurred on or about May 2, and required the efforts of emergency response teams from both Region IV and the U.S. Coast Guard. Investigative efforts by the Region IV Office of Criminal Investigations and the FBI determined that Gardinier was the source of the spill. Violation of 33 U.S.C. Section 1321(B) (5), which served as a model for CERCLA Section 103(b), is a misdemeanor, carrying a penalty of up to one year in prison, or a fine of not more than $100,000. At the time of sentencing Gardinier agreed to be placed on one year of probation, subject to numerous conditions. Among those conditions were (1) performing the restoration of surrounding wetlands and the creation of an artificial reef in Hillsborough Bay (the low pH of the spill caused extensive damage), (2) training in environmental laws and regulations for Gardinier personnel, (3) the upgrading of Gardinier's tank storage areas, and (4) the agreement to take whatever corrective action an environmental audit team recommends for the Gardinier facility.

U.S. v. Sam Jenkins, Jr. and Sea Port Bark Supply, Inc. (CWA): On May 25, 1988, a federal grand jury in Seattle, Washington, returned an eleven-count indictment against Sea Port Bark Supply, Inc., and its Owner-President, Sam Jenkins, Jr. Seven counts charged the two defendants as second Clean Water Act criminal offenders, in violation of 33 U.S.C. Section 1319(c)(1) (the old CWA criminal provision that doubled the penalty for second CWA convictions). Both defendants were also charged with four CWA counts under the 1987 CWA felony provision, 33 U.S.C. Section 1319(c)(2)(A), for the knowing discharge of plant wastewater without a permit. These four violations occurred after enactment of the Water Quality Act of 1987. *(This was the first CWA repeat offender indictment.)* On July 25, 1986, both pled guilty to a CWA misdemeanor violation (33 U.S.C. Section 1319(c)(1)) arising from the unpermitted discharges of wastewater from the plant's bark chip washing operations via an underground overflow pipe into an adjacent waterway. After those convictions, EPA special agents monitored the company's CWA compliance and observed that Sea Port, after a period of compliance, had returned to its earlier practice of allowing wastewater to flow into the waterway (perhaps lulled into a false sense of security by the lenient $1,000 fine for the company and a $250 fine for Jenkins for their 1986 CWA convictions). As a second offender, Jenkins faces up to 26 years in prison and fines up to $550,000, or both. Sea Port faces fines of up to $550,000.

U.S. v. MacDonald and Watson Waste Oil Company, et al. (RCRA): *In the first federal prosecution under the Racketeer Influenced Corrupt Organization statute (RICO) involving the improper handling of hazardous waste,* on April 26, 1988, the United States Attorney Office for the District of Rhode Island unsealed a 53-count indictment that charged two Rhode Island corporations and five individuals associated with those corporations with a conspiracy involving the illegal transportation, storage, and disposal of hazardous waste. It also represents the first RICO prosecution in the District of Rhode Island. Also, on April 26, federal marshals arrested the president of MacDonald and Watson Waste Oil Company, Eugene K. D'Allesandro.

The indictment charges MacDonald and Watson Waste Oil Company, Narragansett Improvement Company, Eugene K. D'Allesandro, Vincent Cinqegrano, Fran Slade, Faust Ritarossi, and Michael O'Laughlin, with fifty-one felony counts and two misdemeanor counts stemming from a conspiracy to transport, store, and dispose of liquid hazardous wastes, sludges, and waste oil-contaminated soils. It is alleged that the two companies entered into contracts for the removal and ultimate disposal of hazardous substances and wastes, when actually those substances and wastes were buried in ditches, poured in storm drains connected with municipal sewerage systems, or mixed with ordinary trash for disposal in municipal sanitary landfills.

U.S. v. Marathon Development Corp. (CWA): *In the first successful EPA criminal prosecution for Section 404 wetlands violations,* on May 4, 1988, U.S. District Court Judge McNaught in Boston handed down sentences against Marathon Development Corp., and Terrence Geoghegan, Marathon's vice-president, subsequent to their previous guilty pleas. Imposition of sentence awaits resolution of a narrow appeal by Marathon to the Court of Appeals for the First Circuit. Both defendants pled guilty to all 25 counts of an indictment, filed on April 8, 1987, charging them with criminal violations of the Clean Water Act (CWA) (33 U.S.C. Section 1319(c)(1)) for their failure to acquire a U.S. Army Corps of Engineers permit to fill a wetland tract, as required by 33 U.S.C. Section 1344. Marathon filled a 5 to 7 acre wetland within a 117 acre site on which it intended to build a shopping mall development in Seekonk, Massachusetts. Geoghegan was sentenced to a six-month suspended prison term, one year of probation, and was ordered to pay a fine of $10,000. Marathon was sentenced to pay a $100,000 fine.

In its sentencing memorandum, the government charged Geoghegan and Marathon with being motivated solely by greed in deciding intentionally to violate the law (evidence was presented that Marathon's environmental consultants and the Corps both informed Geoghegan of the Section 404 permit requirement). That memorandum asserted that Geoghegan and Marathon decided not to apply for a wetlands permit

because they were aware that a competing shopping mall developer had unsuccessfully applied for a permit to fill wetlands for a similar development in neighboring Attleboro, Massachusetts. Judge McNaught, in response to defense counsel's assertion that the government's recommendation of imposition of six months imprisonment, with all but 30 days suspended, and a $25,000 fine for Geoghegan and a $250,000 fine for Marathon, was unduly harsh because no toxic or hazardous substances were involved, responded that the earth fill deposited over the wetlands was just as toxic to the plant life as any toxic chemical would have been.

U.S. v. Ocean Spray Cranberries, Inc. (CWA): On January 28, 1988, a grand jury in Boston handed up a 76-count indictment against Ocean Spray Cranberries, Inc., for misdemeanor and felony violations of the Clean Water Act occurring over a five-year period at its Middleborough, Massachusetts plant. The indictment charges 65 counts of negligent discharges into the Middleborough sewer system of untreated process waste waters that occurred prior to February 4, 1987, in violation of 33 U.S.C. Section 1319 (c)(1) (the old CWA misdemeanor provision). Because Ocean Spray had not pretreated its process waters, the low pH of the waste caused the Middleborough POTW to fail to meet its NPDES limitations. Six counts charged the revised felony provision of the CWA for knowing violations for low pH discharges that occurred after the enactment of the Water Quality Act of 1987, in violation of 33 U.S.C. Section 1319(c)(2), and the last five counts charged the discharge of wastewater directly into the Nemasket River without an NPDES permit, in violation of 33 U.S.C. Section 1319(c)(1). The penalty for each misdemeanor CWA count is a fine of not less than $2,500 nor more than $25,000. Ocean Spray faces up to $1,750,000 in fines on those 70 misdemeanor counts, and under the six felony provision counts, which provide fines of not less than $5,000 nor more than $50,000 per violation, Ocean Spray faces up to $300,000 in fines.

U.S. v. Orkin Exterminating Co. (FIFRA): On April 21, 1988, a federal grand jury in the Western District of Virginia indicted Orkin Exterminating Co., on five counts of violating the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The indictments stemmed from the 1986 deaths of an elderly couple in Galax, Virginia, within a week after Orkin fumigated their home with Vikane, a fumigant lethal to humans in certain doses. On August 8, 1988, a federal judge found Orkin guilty of one misdemeanor violation of FIFRA for failing to ensure that the amount of Vikane in the house had been reduced to safe levels prior to permitting the couple to reenter their home. After a two-day sentencing hearing, the judge found that the couple had died as a result of exposure to excessive levels of the fumigant, and that Orkin's violation of FIFRA had resulted in the couple's death. Pursuant to the Alternative Fines Act, the judge sentenced Orkin to pay a $500,000 fine, with $150,000 of that amount suspended upon completion of two years probation and performance of 2,000 hours of community service.

U.S. v. Pennwalt (CWA/CERCLA): On May 20, 1988, in Seattle, Washington, a federal grand jury indicted the Philadelphia-based Pennwalt Corporation, Inc., one of the nation's largest chemical companies, and four corporate officials, for six environmental criminal violations stemming from a January 2, 1985, tank collapse at Pennwalt's Tacoma, Washington facility. Pennwalt, Robert S. Custer, former corporate vice-president for Chemicals, Franklin M. Shannahan, president of the Pennwalt Inorganic Chemical Division, and Orval J. High, manager of the Pennwalt Tacoma Plant, were indicted on one count charging a negligent violation of the CWA. The basis of this charge was their failure to prevent, despite their apparent ability to have remedied the known structural weakness of a holding tank, the January 2, 1985, spill of approximately 75,000 gallons of a sodium chlorate solution into the Hylebos Waterway from the ruptured tank. ***This is the first time an environmental criminal violation has been linked to a knowing failure to perform preventative maintenance.***

Pennwalt and Mr. High were also indicted in a second count for a violation of the general federal false statement statute for falsely underreporting to the U.S. Coast Guard that the spill amounted to 20,000 gallons instead of the actual amount that was three times that quantity, and for failing to report that the spill involved sodium chlorate, a hazardous substance, which prevented emergency clean up procedures from being initiated. In addition, Pennwalt and High were indicted in the third count for a failure to make a timely report of the spill of this hazardous substance to the Coast Guard, a CERCLA violation. These same two defendants were also charged in the three remaining counts with the unpermitted discharge of the chemical solution into the Waterway via the plant's drain system during the process of cleaning up the spill.

U.S. v. Protex Industries, Inc. (RCRA/CWA): On March 2, the U.S. District Court in Denver sentenced Protex Industries, Inc., following the company's December 21, 1987, conviction on 16 counts, three of which constituted the ***first conviction under RCRA corporate knowing endangerment.*** Protex has appealed its conviction on all 16 counts to the Court of Appeals for the Tenth District. Protex, whose cash assets total $3,375,000 in escrow with the Clerk of the District Court after a sale approved by the U.S. Attorney's Office, faces a total fine of $7,600,000 based on its conviction on three counts of RCRA knowing endangerment, eight counts of RCRA

unpermitted storage or disposal, one count of unpermitted discharge into the water (a misdemeanor because it occurred prior to the 1986 CWA Amendments), three counts of knowingly making false statements to federal, state, and local officials concerning the nature and extent of its waste handling activities, and one count of conspiracy to operate a treatment, storage, and disposal facility without a permit.

The court, influenced by Protex's lack of contrition and failure to accept responsibility for its acts, meted out the maximum sentence ($7.6 million) possible under the conviction. But because of the corporation's limited remedy for the three Protex employees (whom Protex knowingly placed "in imminent danger of death or serious bodily injury" by ordering them to handle hazardous wastes), and because the cost of the cleanup (which the Colorado Health Department had ordered Protex to conduct two years ago) was estimated at $2 million, the court crafted a creative remedy whereby Protex was ordered to establish a $950,000 trust fund to compensate the endangered employees and to pay $440,000 in fines by March 14, with the remainder of the $7.6 million suspended on condition that the company comply with those two conditions of probation. The company was ordered to pay for site clean up, and was allowed to use its remaining $1,980,000 for this purpose. Violation of any terms will result in automatic imposition of the full $7.6 million fine.

Martha C. Rose Chemicals:

o U.S. v. Patrick E. Perrin (TSCA). On July 20, 1988, Patrick E. Perrin, former general manager of the defunct Martha C. Rose Chemicals Co., Inc., Holden, Missouri, was sentenced to two years in a federal penitentiary on his guilty plea to one felony count of conspiracy to defraud the government.

o U.S. v. Dwight E. Thomas (TSCA/CWA). On September 21, 1988, the Federal Grand Jury of the Western District of Missouri indicted a former employee of Martha C. Rose in a 32 count indictment with falsifying and conspiring to falsify records concerning the company's handling and disposal of PCB waste. Mr. Thomas allegedly falsified records and reports required under the terms of PCB Disposal Approvals issued by EPA to Rose as required by the PCB regulations. (The records concern the transportation, storage, decontamination, and disposal of PCB transformers, large capacitors, PCB oils, and PCB contaminated solids). Thomas could face a maximum penalty of 156 years in a federal penitentiary and fines of more than $7 million.

U.S. v. Albert S. Tumin (RCRA/CERCLA): On October 11, 1988, Albert Tumin was sentenced to a two year prison term following his April 13 conviction by a grand jury in Queens on all three counts of an indictment filed on July 8, 1987, under the knowing endangerment provisions of RCRA. ***This is the first conviction of an individual under the RCRA knowing endangerment provisions.*** Tumin's indictment resulted from his purchase in 1985 of three 55-gallon drums of ethylether, a highly explosive RCRA-listed waste, used for, among other purposes, the manufacture of cocaine, from a chemical supplier who had an agreement with the Drug Enforcement Agency to report suspicious purchases of chemicals commonly used in illicit drug manufacture. When the transaction for which Tumin had purchased the ether fell through, he attempted to return the drums to the seller, who refused to accept them. Upon leaving the seller's premises, Tumin realized he was being followed by DEA agents, who had been tipped off by the seller. After he thought he had eluded the agents, during the night of September 12, 1985, he abandoned the drums in a lot in a neighborhood in Rockaway, Queens.

The indictment charged Tumin with one RCRA count for the knowing unlawful transport of a hazardous waste to an unpermitted facility, one RCRA count for knowingly placing other people in imminent danger of death or serious bodily injury by his knowing unpermitted disposal of a RCRA waste, and one CERCLA count for the failure to report the release of a reportable quantity of a hazardous substance to the National Response Center. Under the RCRA transport count, Tumin faced a fine of not more than $50,000 and up to five years imprisonment, under the knowing endangerment count he faced a fine of up to $250,000 and up to 15 years imprisonment, and under the CERCLA count he faced a fine of up to $10,000 and up to one year imprisonment (the act occurred before SARA raised the CERCLA penalty to felony level).

U.S. v. Welco Plating, Inc. and J.C. Collins, Jr. (RCRA/CERCLA/CWA): On April 22, 1988, following their April 5 guilty pleas, the owner/operator and his electroplating company were sentenced for the acts charged in a 30-count indictment filed on January 29, 1988, in the U.S. District Court for the Northern District of Alabama. The indictment, which resulted from an FBI investigation, alleged that J.C. Collins, Jr., and his company, Welco Plating, Inc., of Woodville, Alabama, conspired to violate CERCLA, RCRA, and CWA by dumping into rural roadside ditches electroplating rinsewater wastes over a nine year period from 1978 to 1987.

Collins was sentenced to serve 18 months in prison, was fined $200,000, was placed on five years probation, and must perform 300 hours of community service. In addition, he must pay $14,472.20 to the State of Alabama Department of Environmental Management. For its corporate guilty plea, Welco Plating must pay an estimated $1,300,000 in cleanup costs and pay $14,472.20 to the State of Alabama Department of Environmental Management. Collins, the former mayor of Woodville, had pled guilty to six counts of the indictment. Specifically, Collins pled guilty to the knowing disposal of hazardous waste to an unpermitted facility, in violation of RCRA, the knowing disposal of a hazardous waste without a permit, in violation of RCRA, the knowing transportation of hazardous waste without a manifest, in violation of RCRA, conspiracy, in violation of 18 U.S.C. Section 371, failure to notify the National Response Center of a release of reportable quantity of a hazardous substance, in violation CERCLA, and one count for the willful discharge of a hazardous substance into the waters of the United States, in violation of the CWA (the acts occurred before the enactment of the Water Quality Act of 1987 which made knowing and willful CWA violations subject to felony penalties). Welco pled guilty to the same counts as Collins, except the count alleging conspiracy.

# III. BUILDING AND MAINTAINING A STRONG NATIONAL ENFORCEMENT PROGRAM

## Program Development

### State/EPA Enforcement Agreements

The Policy Framework for the State/EPA Enforcement Agreements is the blueprint for EPA's enforcement relationship with State enforcement programs. Each year the EPA Regional Offices and the States negotiate enforcement agreements establishing clear oversight criteria for assessments of State and EPA compliance and enforcement programs. The agreements also establish the criteria for direct Federal enforcement in delegated States (including procedures for advance consultation and notification), and they put into place procedures for State reporting of management information to EPA.

The most recent revisions to the Policy Framework (1986) more clearly established Federal oversight of State civil penalty assessments. The Policy also strongly encouraged greater involvement by State Attorneys General in the enforcement agreements process, communicating on priorities and case status, and planning resource needs. The FY1988 State/EPA Agreements process sought to improve Regional consistency in addressing areas covered by the agreements, and reiterated the need for the EPA Regional Offices to reach an understanding with their States on Federal facility compliance issues. **(For further information contact OECM's Office of Compliance Analysis and Program Operations (OCAPO))**

### Penalty Practices Report

Each year EPA produces a comprehensive analysis of the financial penalties EPA obtained from violatørs of environmental laws. The report contains an Agencywide overview as well as national and regional summaries for each program. The report also compares annual performance with historical trends. For FY1988, the report indicates that EPA imposed $23.9 in civil judicial penalties and $11.7 million in administrative penalties, both all-time agency bests (these totals do not include the $15 million penalty in the lodged, but not yet filed, consent decree in the Texas Eastern Pipeline case). **(For further information contact OCAPO)**

### Timely and Appropriate Enforcement Response

The Timely and Appropriate Enforcement Response concept seeks to establish predictable enforcement responses by both EPA and the States, with each media program defining timeframes for the timely escalation of enforcement responses. Tracking of timeframes commences on the date the violation is detected through to the date where formal enforcement action is initiated. The programs have also defined what constitutes an appropriate formal enforcement response based on the nature of the violation, including defining when the imposition of penalties or other sanctions is appropriate.

The concept of Timely and Appropriate enforcement response is working well, and it has provided both EPA and the States with useful objective measures of performance which has improved the enforcement relationship. Preliminary analysis of FY1988 performance indicates that the timeliness of response in the majority of EPA's programs has generally remained unchanged from the previous year. **(For further information contact OCAPO)**

## Implementation of the Inspector Training and Development Program

In FY1988, the Agency completed development of the Inspector Training and Development Program. The program was initiated in FY1987 in response to the need for a cross-cutting basic inspector training course to teach the fundamentals of conducting inspections to all Agency inspection and field investigation personnel, as well as filling the need for more advanced media specific training. The Office of Enforcement and Compliance Monitoring (OECM), in cooperation with EPA Regional Offices and the Headquarters enforcement programs, developed the curriculum for the training program to ensure that all Agency inspection personnel are able to conduct technically sound inspections to enhance EPA's ability to determine source compliance and support formal enforcement actions. *EPA Order 3500.1* , signed by Administrator Lee M. Thomas on June 29,1988, made mandatory the satisfactory completion of basic and program-specific inspector training before any EPA employee may lead an EPA inspection unless they have otherwise been exempted based on previous training or experience. Although the *Order* does not apply to persons employed by State and Local agencies, these agencies are encouraged to establish similar structured programs and to avail themselves of EPA training materials. **(For further information contact OCAPO)**

## Contractor Listing Program

EPA has the authority under the Clean Air and Clean Water Acts to assure that the Federal government does not do business (i.e., engage in grants, contracts, or loans) with facilities that have demonstrated a pattern of noncompliance with those statutes. In FY1988, the listing program addressed substantial new policy questions resulting from the change in the regulations and the issues raised by the cases processed under the new regulations. The program developed several major new policies including the use of listing in CAA NESHAP cases, and the resolution of listing issues in plea agreements. The program also developed a 140-page manual, the *Contractor Listing Protocols*, issued on October 7, 1987, and developed materials and a training program for compliance and enforcement personnel and case examiners. Finally, Contractor Listing was included as an enforcement component in the EPA Federal Facility Compliance Strategy. **(For further information contact the OECM's Contractor Listing Staff.)**

# Strategies, Guidance, and Initiatives

EPA continues to make use of the strategic planning process to refine and improve its compliance and enforcement strategies. This management tool is designed to promote strategic thinking by senior managers, and help them focus on how best to address emerging environmental problems. The written strategies and guidance for compliance and enforcement, especially for newer programs, serve as the framework for day-to-day program operations. Highlighted below are several examples of strategies and guidance developed in FY1988.

## New Volatile Hazardous Air Pollutants (VHAP) Penalty Policy

On March 3, 1988, the Office of Air and Radiation's (OAR) Stationary Source Compliance Division (SSCD) and OECMs Air Enforcement Division (OECM-Air) jointly issued a new appendix to the Clean Air Act Civil Penalty Policy entitled "Appendix VI -- Volatile Hazardous Air Pollutants (VHAP)." This appendix assists in determining the gravity component of the civil penalty settlement amount for cases enforcing the National Emission Standard for Equipment Leaks, 40 C.F.R. Part 61, Subpart V. **(For further information contact OECM-Air)**

## Policy on Contractor Listing for Asbestos Renovation and Demolition Companies

On March 11, 1988, SSCD and OECM-Air issued guidance on "Listing Asbestos Demolition and Renovation Companies Pursuant to Section 306 of the Clean Air Act." Under this section, the Agency may place a violator of the Clean Air Act on a government-wide list of violating facilities, thereby preventing it from contracting with the government. **(For further information contact OECM-Air)**

## New Source Review Guidance

On July 15, 1988, SSCD and OECM-Air issued "Procedures for EPA to Address Deficient New Source Permits Under the Clean Air Act" to assist in the issuance of permits for major new sources and major modifications under both the Prevention of Significant Deterioration program and the nonattainment New Source Review program. The guidance sets forth procedures to be followed when permits are issued either directly by EPA, or EPA-approved state programs, or by states pursuant to delegations of authority from EPA. An appendix of model forms is also included. **(For further information contact OECM-Air)**

## Enforcement Action Settlement Guidance for Actions in Nonattainment Areas

On November 23, 1987, OAR and OECM issued guidance entitled "Settling Enforcement Actions in Clean Air Act Nonattainment Areas Against Stationary Sources Which Will Not Be In Compliance by the Applicable Attainment Date." Where a source violates emission limitations for pollutants in nonattainment areas, this policy observes that, in some cases, shutdown may be the appropriate relief. For other cases, the policy lists factors to consider when an expeditious compliance schedule going beyond the attainment date may be appropriate. **(For further information contact OECM-Air)**

## State Implementation Plan (SIP) Enforcement Guidance

On December 31, 1987, SSCD and OECM-Air issued "Guidance on Evaluating Clean Air Act Enforcement of State Implementation Plan Violations Involving Proposed State Revisions" to assist in deciding on appropriate enforcement responses where SIP revisions are pending. The guidance suggested to the Regions how to apply the criteria in developing enforcement cases and included a case evaluation form to be used for all cases involving SIP revisions. **(For further information contact OECM-Air)**

## Sulfur Dioxide Continuous Compliance Strategy

On July 5, 1988, SSCD issued the Sulfur Dioxide (SO2) continuous compliance strategy which provides State and local agencies and EPA Regional Offices with guidance on making decisions about SO2 noncompliers. It divides SO2 noncompliers into two groups, the first consisting of marginal noncompliers requiring additional information before initiating an enforcement action. The second group are sources significantly out of compliance for which an enforcement action should be considered. Numerical percentages related to degree of noncompliance are used to indicate the appropriate type of follow-up action. The strategy is specifically designed not to impose any additional burdens; rather, its purpose is to ensure consistent, efficient and effective utilization of existing compliance resources. Current regulatory requirements are used to determine excess emissions, averaging time, monitoring methods and degree of violation. **(For further information contact SSCD-OAR)**

## Compliance Monitoring Strategy for FY1989 - Air

The Compliance Monitoring Strategy (CMS), issued in March 1988, is the culmination of a multi-year effort that focused on addressing important issues in the air compliance program, and will replace the Inspection Frequency Guidance in FY1989. The CMS emphasizes flexibility with accountability and recommends developing a comprehensive inspection plan that identifies all sources or source categories committed to be inspected by the State agency during their fiscal year. It also provides State agencies with the flexibility to address significant local air pollution concerns such as citizen complaints, odor problems, and other localized toxic, hazardous, and nuisance issues. **(For further information contact SSCD - OAR)**

## Revised Asbestos NESHAP Strategy

On March 31, 1988, SSCD and OECM-Air issued a revised strategy for targeting EPA and State asbestos NESHAP compliance monitoring inspections. Rapid growth in the number of notifications of sites undergoing demolition or renovation prompted the agency to revise the inspection strategy to place priority for inspections on demolition and renovation contractors. Inspection efforts focused on contractors should result in a more resource-effective enforcement program. The strategy also contains a new section on outreach that describes methods of communication with the regulated community. Other additions include new appendices on identifying non-notifiers, EPA technical assistance, generic Section 113(a) and temporary restraining orders, and the finalized guidance on contractor listing (see discussion above). **(For further information contact OECM-Air)**

## Clean Water Act National Municipal Policy

The primary National Municipal Policy (NMP) goal during FY1988 was to assure successful implementation of the Policy by the July 1988 deadline. The NMP requires compliance with Final Effluent Discharge Limitations (FEL), with or without Federal funding, by July 1, 1988. It was critical that the Agency demonstrate its seriousness in enforcing against violations of established schedules, other noncompliance with the Policy's objectives, and Clean Water Act requirements for municipals. Following an EPA review of State and Regional actions in the Spring, and supported by construction data collected in a survey performed by Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), the Office of Water Enforcement and Permits (OWEP) and OECM continued to press for the settlement (or filing) of cases as part of the FY1987 Enforcement Strategy directed at the worst cases. The heart of the Strategy was a list of candidates for referral, including Federal overfile actions. Since the NMP Enforcement Strategy took effect in 1984, 141 major Federal and State cases have been referred and 108 were settled. During FY1988, the number of NMP majors (approximately 1,500) not under enforceable schedules was reduced from 23 to 14 (mainly unresolved marine variance request cases). The number of majors that had achieved compliance doubled and reached 1,055 (this included 90 which were expected to meet Final Effluent Limits by October 1, 1988). Of those majors that did not achieve compliance by July 1, 1988, 195 were on judicial schedules, 40 on administrative orders, 178 were in the referral process and 10 301(h) decisions were pending. **(For further information contact the Office of Water Enforcement and Permits (OWEP) in the Office of Water (OW))**

## NPDES Pretreatment Compliance Monitoring and Enforcement Guidance Software

The Office of Water Enforcement and Permits has developed and distributed software to Publicly Owned Treatment Works (POTWs) with approved pretreatment programs for use in managing their enforcement programs. This software, which is IBM compatible, can be used to manage pretreatment program data on industrial users including limits, effluent discharge reports, compliance schedules, control mechanisms and enforcement actions. With appropriate data input,

reports. There are no requirements that pretreatment programs use this software; it is provided as an optional tool which can significantly ease and improve pretreatment implementation. Although the software was intended for POTWs, Regions and States may find it useful to track industrial users for which they are control authorities. **(For further information contact OWEP - OW)**

## CWA Pretreatment Permits and Enforcement Tracking System

The Pretreatment Permits and Enforcement Tracking System (PPETS) was fully implemented in FY1988 with data now in the system for approximately 65% of approved pretreatment programs. This data is being used to identify pretreatment programs which are failing to adequately implement significant portions of their approved programs, and to develop information on trends and problems in national program implementation. Data from the system is helpful in identifying enforcement candidates and assessing overall compliance. Information developed from PPETS to date indicates that approximately 43% of POTWs are failing to adequately implement at least one significant component of their pretreatment program and may be subject to future administrative or judicial enforcement. **(For further information contact OWEP - OW)**

## CWA Organic Chemicals, Plastics, and Synthetic Fibers Initiative

On December 30, 1987, OWEP issued guidance to both EPA Regional Water Division Directors and specific Industrial Users (IUs) outlining the basic responsibilities and activities required of each to ensure that IUs achieve compliance with the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) regulations. In the guidance, Regional Water Offices were provided with a Regional listing identifying the name and address of each OCPSF IU subject to the standards followed by the name and address of the POTW to which it discharges. With this information, Regional Offices were instructed to identify the control authority with the primary pretreatment oversight responsibility. This control authority is also expected to establish compliance schedules for affected IUs. In addition, a listing of these IUs was sent to each State that has pretreatment program authority. Additional guidance was sent to Regional Water Management Division Directors on August 8, 1988, to provide further information on the implementation of the OCPSF Pretreatment Standards. **(For information contact OWEP - OW)**

## FIFRA Disinfectant Enforcement Initiative

In June 1988, EPA initiated an investigation of companies making false claims on behalf of their products' effectiveness as a disinfectant against human pathogens, in particular the AIDS virus, in violation of FIFRA. Most of these disinfectants are sold for use on hospital and dental equipment. The Agency received complaints from the medical community that these claims were appearing in advertising and product literature which was distributed by these companies to their customers. As a result of its investigations, the Agency issued seven civil complaints against companies making these false claims. The companies involved were: Georgia Steel and Chemical Company, Colgate Hoyt, Sporicidin International, Surgikos, Inc., Dixie USA Inc., Optivision Corporation, and Airwick Professional Products. Georgia Steel and Chemical Company, Colgate Hoyt, Surgikos, Inc., and Optivision Corporation have resolved their cases with the Agency and have agreed to cease making these claims. In addition, Georgia Steel and Chemical Company, Colgate Hoyt, and Surgikos, Inc., paid civil penalties of $1,820, $5,000, and $10,000, respectively, for these violations.

The Sporicidin case went to hearing before an EPA Administrative Law Judge (ALJ) in May, 1988. An initial decision rendered by the ALJ on November 1, 1988, upheld the agency's civil complaint against Sporicidin International for promoting two of its disinfectant products as effective against the AIDS and Hepatitis B viruses in violation of Section 12(a)(1)(B) of FIFRA. The judge also upheld the maximum penalty amount of $5,000 for each violation for a total penalty assessment of $10,000. Sporicidin filed a motion appealing the decision with EPA's Chief Judicial Officer on November 28, 1988. The result of this appeal is pending. **(For further information contact the Office of Compliance Monitoring (OCM) in the Office of Pesticides and Toxic Substances (OPTS))**

## TSCA Section 313 Notices of Noncompliance and Civil Penalty Initiative

Although the failure to submit a toxic chemical release form is the most serious violation and the primary focus of the Agency's inspection effort under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), the Agency has also instituted enforcement actions for the filing of erroneous reports. The first group of Notices of Noncompliance (NONs) totaled 553 and was issued on September 16, 1988, to facilities which submitted incomplete or erroneous forms. Since September, an additional 1,070 facilities have been issued NONs, most of them for incorrect reporting. Failure to correct these errors may subject these facilities to administrative penalties.

On December 16, 1988, EPA issued civil complaints to 25 companies that failed to report their toxic chemical release information on July 1, 1988, as required by EPCRA. The proposed civil penalty assessments in the complaints are dependent on the company's size, the number of chemicals that should have been reported, and the quantities of chemicals which were manufactured, imported, processed or used. EPCRA authorizes EPA to assess penalties up to $25,000 per day per chemical for failure to report chemical emissions. **(For further information contact OCM - OPTS)**

## TSCA Section 5 Enforcement Response Policy

On August 5, 1988, EPA revised its enforcement response policy for premanufacture notification (PMN) violations under Section 5 of TSCA which requires manufacturers and importers to notify EPA 90 days prior to manufacturing or importing new chemical substances in the United States, and supply the Agency with health and environmental effects information. The revision is a result of the Office of Pesticides and Toxic Substances ongoing program to review and update such policies as it gains experience in specialized compliance programs under TSCA. This new enforcement response policy for PMN violations bases penalties on the potential for harm to health and the environment, distinguishing between chemicals of imminent hazard or serious concern and those which pose little or no risk. The severity or dollar amount of the penalty EPA will assess to PMN violators depends on the overall seriousness of the violation. A gravity-based penalty matrix has been developed to evaluate the circumstances, extent and nature of the PMN violation, and to classify the violation as major, significant or minor. The policy treats violations involving genetically engineered microorganisms as major violations regardless of the amount of substance involved. It also applies maximum penalties, up to $25,000 per day in violation, to violations involving an imminent hazard situation. **(For further information contact OCM- OPTS)**

## Registration of Pesticides and Active Ingredient-Producing Establishments Reports

On September 8, 1988, EPA published in the Federal Register a final rule entitled "Registration of Pesticide and Active Ingredient-Producing Establishments, Submission of Pesticide Reports". This rule expands current regulations for establishing registration and reporting requirements for chemicals that are used both as pesticides and non-pesticides. These chemicals, known as multi-use chemicals, place the responsibility for regulatory requirements on establishments that have actual or constructive knowledge that their multi-use products are being used as pesticides. The rule eliminates the establishment registration requirement for customer blending establishments. Customer blenders are establishments that blend pesticide mixtures to the specifications of a customer, usually a farmer. The rule also changes the date for filing annual pesticide production reports from February 1 to March 1. **(For further information contact OCM - OPTS)**

## FIFRA and TSCA Good Laboratory Practice Standards

On December 28, 1987, EPA published in the Federal Register the proposed revisions to the FIFRA and TSCA Good Laboratory Practice Standards (GLPs) (52 FR 48920). The FIFRA and TSCA GLPs were originally published in the Federal Register of November 29, 1983, (48 FR 53446), and were codified as 40 CFR 160 and 792 respectively.

EPA is proposing to expand the scope of the FIFRA and TSCA GLPs in order to ensure the quality and integrity of test data submitted to the Agency in conjunction with a pesticide product registration, other marketing and research permit, or submitted to the Agency in accordance with a TSCA Section 4 or 5 rule or order. The expanded scope of the proposed FIFRA GLPs will require compliance for such disciplines of testing as ecological effects, chemical fate, residue chemistry, and, as required by 40 CFR 158.160, product performance (efficiency testing). EPA is proposing that both the FIFRA and TSCA GLPs require compliance for testing conducted in the field, and is also proposing to amend the FIFRA and TSCA GLPs to incorporate many of the changes made by the Food and Drug Administration (FDA) to its regulations (52 FR 33768; September 4, 1987). EPA has conformed to FDA's revised regulations wherever possible in order to minimize the regulatory burden which might arise from conflicting requirements. The proposed FIFRA and TSCA GLPs differ from the FDA only to the extent necessary due to statutory responsibilities, with the most significant differences between the FDA and EPA are in the scope of the testing (i.e., environmental studies and efficacy studies, in addition to health effects testing) and test systems (i.e., plants, soils, and microorganisms, in addition to animals) affected. **(For further information contact OCM - OPTS)**

## TSCA Section 6(e) Monitoring Strategy Amendment

The Second Compliance Monitoring Strategy Amendment for TSCA Section 6(e) - Polychlorinated Biphenyls, is an addition to the previously issued PCB Compliance Monitoring Strategy as amended. This second amendment emphasizes targeting inspections at approved PCB disposal sites on a periodic basis as well as inspections at storage and intermediate handling facilities. **(For further information contact OCM - OPTS)**

## CERCLA Section 106 Enforcement

### CERCLA Enforcement Incentives/Disincentives Workgroup

At a meeting of senior Agency and DOJ enforcement officials held in February 1988, methods to increase the effectiveness of the Agency's use of CERCLA Section 106 authorities were explored. As a follow-up to this meeting, a workgroup was established to explore EPA's policies and practices to assure the proper balance of incentives to settle and disincentives not to settle for Potentially Responsible Parties (PRPs) at Superfund sites. The workgroup recommended a fundamental approach to the Agency's use of unilateral Section 106 Administrative Orders when negotiations have been unsuccessful. Briefly, the workgroup concluded that the use of unilateral Administrative Orders will frequently provide a strong incentive to settlement, and recommended that there should be a bias in favor of issuance of a unilateral Administrative Order where some or all of the PRPs are unwilling to enter into settlements. **(For further information contact OECM-Waste)**

### CERCLA Section 106 Initiative

In April 1988, the Administrator requested that each Region identify one or more Section 106 cases for a unilateral enforcement action in an effort to increase the degree of PRP involvement in site clean up. OECM and the Office of Solid Waste and Emergency Response (OSWER) undertook an initial screening of potential sites, looking especially at NPL sites where Records of Decision (RODs) were signed or would be signed in the near term. This effort resulted in identification of 22 sites for Section 106 referrals. At the end of FY1988, four of these cases have been settled and two cases have been referred. Of the remaining sixteen sites, several are in the final stages of settlement negotiations, and several have had the projected ROD signature date delayed, and thus are not yet ready for referral. In addition, fourteen Section 106 unilateral administrative orders for Remedial Design/Remedial Action were issued in FY1988. This total is more than twice the total issued since the beginning of the CERCLA program. **(For further information contact OECM-Waste)**

## Guidance on Use and Enforcement of CERCLA Information Requests and Administrative Subpoenas

The above-referenced guidance was issued by OECM on August 25, 1988. The document provides guidance on the use of EPA's information gathering authority under CERCLA Section 104(e) information requests and Section 122(e)(3)(B) regarding administrative subpoenas. **(For further information contact OECM-Waste)**

## Guidance on Potentially Responsible Party Participation in Remedial Investigations and Feasibility Studies

This guidance sets forth the policy and procedures governing PRP participation in Remedial Investigations/Feasibility Studies (RI/FS) under CERCLA. It discusses the circumstances under which PRPs may conduct the RI/FS; the development of enforceable agreements governing RI/FS activities; oversight of PRP activities; correction of deficiencies and dispute resolution; and PRP participation in Agency RI/FS activities. **(For further information contact the Office of Waste Programs Enforcement (OWPE) in the Office of Solid Waste and Emergency Response (OSWER))**

## Cost Recovery Strategy

This guidance sets forth the Agency's priorities and objectives for the Superfund Cost Recovery program. The guidance encourages maximizing the return of revenues to the Superfund; initiating necessary litigation or resolve ripe cases for cost recovery within strategic timeframes, but no later than the time provided under the statute of limitations; encourage PRP settlement by implementing an effective cost recovery program against non-settlers (recalcitrants); and, effective use of administrative authorities and dispute resolution procedures to resolve cases without unnecessary recourse to litigation. **(For further information contact OWPE-OSWER)**

## CERCLA Cost Recovery Arbitration Regulations

On August 4, 1988, a proposed regulation providing arbitration procedures for small Superfund cost recovery claims was published in the Federal Register for public comment. The regulation, when final, will implement Section 122(h)(2) of SARA, which authorizes EPA to use arbitration as a method of settling Section 107 cost recovery claims when the total response costs at the site do not exceed $500,000, excluding interest. **(For further information contact OECM-Waste)**

## CERCLA EPA/State Relations

### Guidance on Funding CERCLA State Enforcement Actions at NPL Sites

This guidance discusses the conditions States must agree to in applying for and receiving cooperative agreement funding to conduct enforcement related activities including PRP searches, negotiating administrative and judicial enforcement, and oversight of PRPs. **(For further information contact OWPE-OSWER)**

### Establishment of EPA-State Workgroup

OSWER established a workgroup on State enforcement with membership including representatives from EPA headquarters and Regions, States, DOJ, and the National Association of Attorneys General. The result of the initial meetings has been to establish State-lead enforcement sites as a recognized category of NPL sites. One policy developed through the workgroup is the guidance on counting State-lead enforcement sites toward the section 116(e) mandate. The workgroup is focusing on a better partnership between States and the Federal government. **(For further information contact OWPE-OSWER)**

## Federal Facility Hazardous Waste Compliance Initiative

In FY1988, the Office of Solid Waste and Emergency Response (OSWER) created a special task force to work with EPA regions, States and other EPA offices to bring Federal facilities into compliance with the hazardous waste statutes. The task force identified Federal facilities of concern, established policies and strategies for carrying out enforcement and compliance monitoring at these facilities, and established program planning and management accountability systems to allocate resources to address these facilities and track progress in addressing them.

The task force published in the Federal Register the Federal Agency Hazardous Waste Compliance Docket. The Docket is a computerized data base defining the universe of potential Federal facility hazardous waste problems. The Docket and biannual update required extensive coordination, both within the EPA and with over twenty other Federal agencies (resulting in a Docket of over 1000 facilities), and set into motion a series of statutory deadlines for the assessment, evaluation, and potential listing of Docket facilities on the National Priorities List (NPL). The Task Force developed comprehensive guidance for Federal agencies and EPA Regions to use in assessing facilities for the NPL, resulting in the evaluation of over 100 facilities for a special NPL Update.

Policy development included a comprehensive enforcement strategy defining the range of enforcement options available to EPA under RCRA and CERCLA, with criteria for Regions to consider in selecting an approach. Procedures issued to the Regions explained when and how to elevate compliance disputes to keep the enforcement process moving. Also, model agreements for Superfund and RCRA were successfully negotiated with the Departments of Defense and Energy. The model agreements, designed to expedite site specific clean up negotiations, contain key provisions for enforceability, assessment of stipulated penalties for failure to comply with the agreement, and dispute resolution procedures. **(For further information contact OWPE-OSWER)**

## Off-Site Policy and Rule

On December 13, 1987, OSWER issued the Off-Site Policy describing the procedures to be observed when a response action under CERCLA or Section 7003 of RCRA involves off-site treatment, storage or disposal of CERCLA waste. The procedures also apply to actions taken jointly under CERCLA and other Agency statutes. The purpose of the Off-Site Policy is to avoid CERCLA waste disposal contributing to present or future environmental problems by directing these wastes to facilities determined to be environmentally sound. The Off-Site Rule was published in the Federal Register on November 29, 1988. The rule, unlike the policy, does not cover actions taken under Section 7003 of RCRA. **(For further information contact OWPE-OSWER)**

## Revised RCRA Enforcement Response Policy

The RCRA Enforcement Response Policy (ERP) provides guidance to the Regions and States on how to classify violations along with a description of appropriate enforcement responses for each category of violation. The ERP also establishes timeframes for response to violations. The revised ERP, effective on October 1, 1988, acknowledges that for some complicated cases more time may be required and is therefore "appropriate." The major change in the ERP is to the definition of high priority violators (HPV) where an HPV designation will be based heavily on case specific information. **(For further information contact OWPE-OSWER)**

## Surface Impoundment Retrofitting Strategy

RCRA Section 3005 (j)(1) requires surface impoundments that were in existence on November 8, 1984, and qualifying for the authorization to operate under interim status, to be retrofitted to meet the minimum technological requirements of Section 3004(o)(1)(A), or cease the receipt of hazardous

waste unless the owner or operator had obtained an exemption from these requirements. To implement and enforce these requirements, OWPE prepared a sample letter for notifying owners and operators of the requirements; a Federal Register notice explaining the requirements (June 30, 1988); and an enforcement strategy (September 29, 1988). **(For further information contact OWPE-OSWER)**

## Administrative Record Guidance

**RCRA** - Hearing procedures for unilateral RCRA Section 3008(h) corrective action orders were promulgated in FY1988, requiring that EPA prepare an administrative record supporting the order at the time of issuance. This requirement is critical to the operation of the hearing procedures and any subsequent judicial review.

**Superfund** - OSWER has developed a strategy on administrative records for selection of response actions which included training and assessment of all ten Regions to ensure the compilation of adequate records. The strategy also includes the issuance of a guidance document to be used by the Regions in draft form pending publication of proposed regulations on administrative records. The regulations are slated to be Subpart I of the revised NCP. **(For further information contact OWPE-OSWER)**

## Natural Gas Pipeline Enforcement Strategy

This strategy outlines how EPA's RCRA and TSCA enforcement programs are to coordinate enforcement activities with respect to natural gas pipelines contaminated with PCBs. **(For further information contact either OWPE or the Office of Compliance Monitoring in OPTS)**

# IV. MEDIA SPECIFIC ENFORCEMENT PERFORMANCE: RESOLVING SIGNIFICANT NONCOMPLIANCE

## The Strategic Planning and Management System (SPMS)

EPA uses the Strategic Planning and Management System (SPMS) to ensure that EPA and State managers identify the highest priority environmental problems and establish accountability for resolving those problems. For enforcement, EPA and the States have identified a core group of management indicators to track progress in each media including inspections, compliance rates, identifying and resolving significant noncompliance (SNC), and numbers of civil and criminal case referrals and administrative orders. During the Agency's annual operating guidance development process, media compliance and enforcement programs identify a category(s) of violations determined to be the most environmentally significant (SNC). At the beginning of each fiscal year, EPA and the States review the known universe of SNC's and establish joint commitments to address them during the year. The following program summaries indicate EPA and State progress in resolving SNC over the past several years.

## Air Enforcement - Stationary Sources

The air enforcement program has defined SNC as a violation of State Implementation Plan (SIP) requirements in areas not attaining primary ambient air quality for the pollutant for which the source is in violation, violations of New Source Performance Standards (NSPS), and violations of National Emission Standards for Hazardous Air Pollutants (NESHAPs). Also included are violations of Prevention of Significant Deterioration (PSD) and nonattainment new source review (NSR) requirements. At the beginning of FY1988, EPA and the States identified 703 violating facilities as SNC's, including 168 that had enforcement action initiated against them prior to FY1988. At year's end, 261 of the SNC's had been brought back into compliance, 85 were subject to an enforceable compliance schedule, 221 were subject to a formal enforcement action, and 136 were unresolved. In addition to addressing those SNC's identified at the beginning of the Fiscal Year, EPA and the States identified an additional 599 new significant violators, of which 215 were either returned to compliance or were placed on an enforceable schedule leading to compliance.

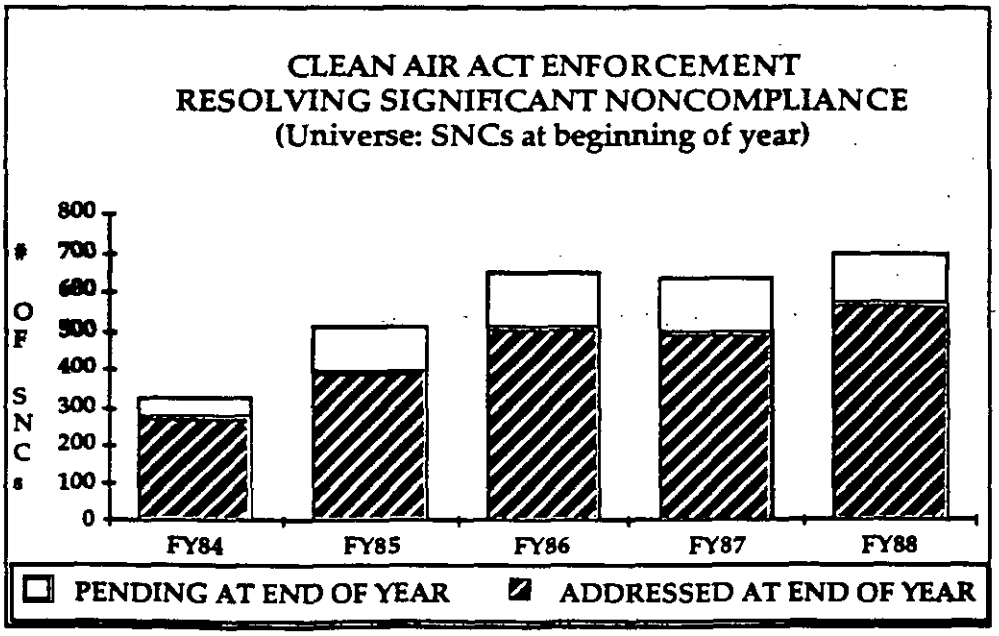
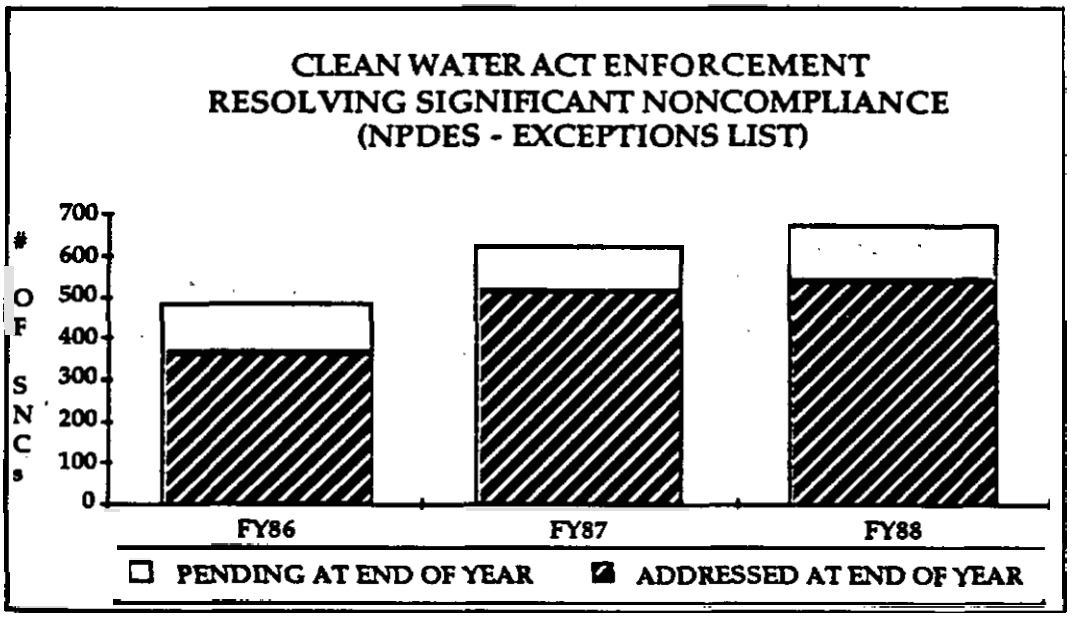



Illustration 7

## Water Act Enforcement - NPDES Exceptions R

The NPDES enforcement program has defined SNC to include violations of effluent limits, reporting requirements, and/or violations of formal enforcement actions. Unlike the other Agency enforcement programs, the NPDES program does not track SNC against a "fixed base" of SNC that is established at the beginning of the year, rather, the program tracks SNCs on a quarterly "exceptions list" that identifies those facilities that have been in SNC for two or more quarters without returning to compliance or being addressed by a formal enforcement action.

During FY1988, 675 facilities were reported on the SNC exceptions list including 103 facilities that were unaddressed from the previous year and 572 facilities that appeared on the list for the first time during the year. Of the 675 facilities on the exceptions list, 320 returned to compliance by the end of the year, 221 were subject to a formal enforcement action, and 134 facilities remained to be addressed during the upcoming year.




## Safe Drinking Water Act Enforcement

The Public Water Supply enforcement program tracks significant noncompliance on an exceptions basis for those public water supply systems that exceed standards for microbiological, turbidity, and total tri-halomethane (TTHM). The Underground Injection Control program tracks on an exceptions basis Class I, II, III, and V wells that failed mechanical integrity, exceeded injection pressure, or received unpermitted injection material.

The Safe Drinking Water Act Amendments of 1986 provided EPA with significant new administrative enforcement authorities, and in the past two years the EPA Regional offices have taken 413 such actions.

## RCRA Enforcement

Since FY1986, the RCRA SNC definition has focused on land disposal facilities (LDF's) with Class I violations of groundwater monitoring requirements, financial responsibility requirements, or closure/post-closure requirements. (Prior to FY1986, the RCRA program defined SNC as a Class I violation by a "major handler.") The RCRA definition was expanded in FY1988 to include any Treatment, Storage, and Disposal Facility (TSDF) in violation of a corrective action compliance schedule. In FY1988, the program identified 674 land disposal facilities as SNCs, and at the end of the year 85 had been returned to compliance, 253 were on compliance schedules, and 328 had an administrative or judicial complaint pending against them.

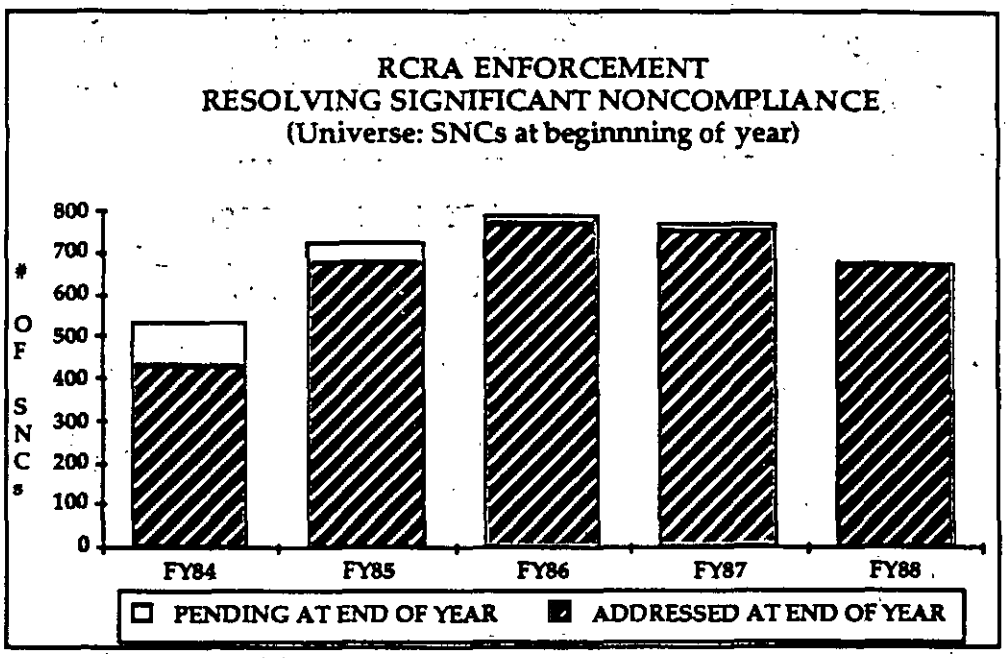



Illustration 9

## Superfund Enforcement

The Agency dramatically increased the level of Superfund judicial enforcement activity in FY1988 with 114 civil cases referred to DOJ seeking either recovery of past costs, injunctive relief, or site access. In addition, one criminal case was referred to DOJ. The program issued 224 administrative orders, and Remedial Design/Remedial Action negotiations were completed for 96 sites. Under Section 107, the Agency referred 56 cases seeking recovery of past costs valued at $126 million, and response actions to be undertaken by Potentially Responsible Parties (PRPs) under Section 106 are valued at $470 million.

## Toxic Substances Control Act (TSCA) Enforcement

The TSCA program defines SNC as violations of PCB disposal, manufacturing, processing, distribution, storage, record-keeping, or marking. The definition also includes Asbestos-in-School violations, import certification and recordkeeping violations, and testing or premanufacturing notification violations. At the beginning of FY1988, the Regions had 685 open SNC cases, and by the end of the year 583 cases were closed and 102 remained open. During the year EPA identified 519 new SNCs based on pre-FY1988 inspections, with 420 having enforcement action taken. Based on FY1988 inspections, EPA identified 377 new SNCs, with 228 having enforcement action taken.

# APPENDIX:

# ENFORCEMENT DATA

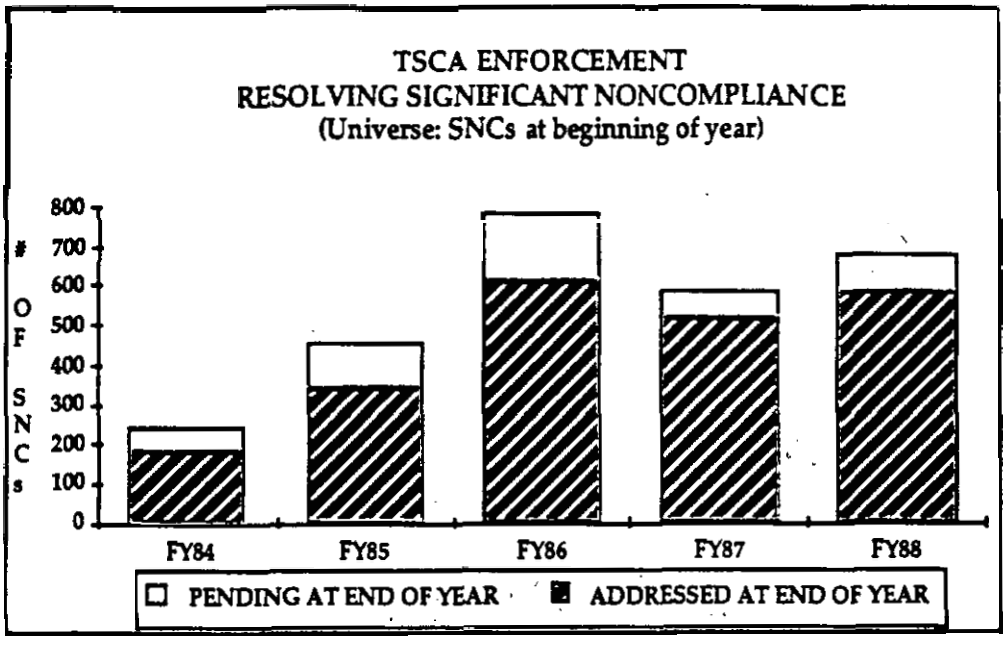



Illustration 10

## Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Enforcement

The FIFRA program has defined SNC to include pesticide misuse violations. Reflecting the major role of the States in enforcing these types of violations, the EPA Regions and each of their States agree on significant violation categories given patterns of use unique to each State, and they establish timeframes for investigating and taking enforcement actions against these significant violations. In FY1988, EPA and the States addressed 136 SNCs, and 41 SNCs were awaiting action at the end of the year.

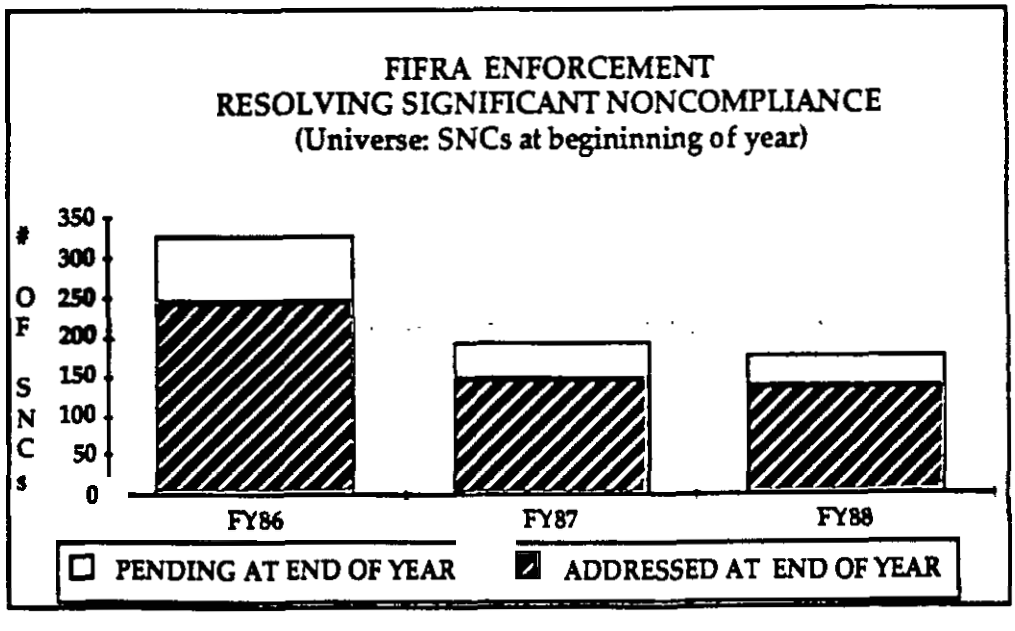



Illustration 11

## EPA CIVIL REFERRALS TO THE DEPARTMENT OF JUSTICE
## FY1972 TO FY1988

| | FY72 | FY73 | FY74 | FY75 | FY76 | FY77 | FY78 | FY79 | FY80 |
|---|---|---|---|---|---|---|---|---|---|
| AIR | 0 | 4 | 3 | 5 | 15 | 50 | 123 | 149 | 100 |
| WATER | 1 | 0 | 0 | 20 | 67 | 93 | 137 | 81 | 56 |
| HAZARDOUS WASTE | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 9 | 53 |
| TOXICS/PESTICIDES | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 1 |
| TOTALS | 1 | 4 | 3 | 25 | 82 | 143 | 262 | 242 | 210 |

| | FY81 | FY82 | FY83 | FY84 | FY85 | FY86 | FY87 | FY88 |
|---|---|---|---|---|---|---|---|---|
| AIR | 66 | 36 | 69 | 82 | 116 | 115 | 122 | 86 |
| WATER | 37 | 45 | 56 | 95 | 93 | 119 | 92 | 123 |
| HAZARDOUS WASTE | 14 | 29 | 33 | 60 | 48 | 84 | 77 | 143 |
| TOXICS/PESTICIDES | 1 | 2 | 7 | 14 | 19 | 24 | 13 | 20 |
| TOTALS | 118 | 112 | 165 | 251 | 276 | 342 | 304 | 372 |

## EPA ADMINISTRATIVE ACTIONS INITIATED (BY ACT)
## FY1972 TO FY1988

| | FY72 | FY73 | FY74 | FY75 | FY76 | FY77 | FY78 | FY79 | FY80 |
|---|---|---|---|---|---|---|---|---|---|
| CAA | 0 | 0 | 0 | 0 | 210 | 297 | 129 | 404 | 86 |
| CWA/ SDWA | 0 | 0 | 0 | 738 | 915 | 1128 | 730 | 506 | 569 |
| RCRA | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| CERCLA | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| FIFRA | 860 | 1274 | 1387 | 1614 | 2488 | 1219 | 762 | 253 | 176 |
| TSCA | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 22 | 70 |
| TOTALS | 860 | 1274 | 1387 | 2352 | 3613 | 2644 | 1622 | 1185 | 901 |

| | FY81 | FY82 | FY83 | FY84 | FY85 | FY86 | FY87 | FY88 |
|---|---|---|---|---|---|---|---|---|
| CAA | 112 | 21 | 41 | 141 | 122 | 143 | 191 | 224 |
| CWA/ SDWA | 562 | 329 | 781 | 1644 | 1031 | 990 | 1214 | 1345 |
| RCRA | 159 | 237 | 436 | 554 | 327 | 235 | 243 | 309 |
| CERCLA | 0 | 0 | 0 | 137 | 160 | 139 | 135 | 224 |
| FIFRA | 154 | 176 | 296 | 272 | 236 | 338 | 360 | 376 |
| TSCA | 120 | 101 | 294 | 376 | 733 | 781 | 1051 | 607 |
| TOTALS | 1107 | 864 | 1848 | 3124 | 2609 | 2626 | 3194 | 3085 |

## EPA CRIMINAL ENFORCEMENT
## FY1982 TO FY1988

| | FY82 | FY83 | FY84 | FY85 | FY86 | FY87 | FY88 |
|---|---|---|---|---|---|---|---|
| REFERRALS TO DOJ | 20 | 26 | 31 | 40 | 41 | 41 | 59 |
| CASES SUCCESSFULLY PROSECUTED | 7 | 12 | 14 | 15 | 26 | 27 | 24 |
| DEFENDANTS CHARGED | 14 | 34 | 36 | 40 | 98 | 66 | 97 |
| DEFENDANTS CONVICTED | 11 | 28 | 26 | 40 | 66 | 58 | 50 |
| o MONTHS SENTENCED | | | 6 | 78 | 279 | 456 | 278 |
| o MONTHS SERVED | | | 6 | 44 | 203 | 100 | 185 |
| o MONTHS PROBATION | | 534 | 552 | 882 | 828 | 1410 | 1284 |

## STATE ENVIRONMENTAL AGENCY
## JUDICIAL REFERRALS AND ADMINISTRATIVE ORDERS
## FY1985 TO FY1988

### ADMINISTRATIVE ORDERS

| | FY85 | FY86 | FY87 | FY88 |
|---|---|---|---|---|
| FIFRA | 8899 | 6055 | 5922 | 5078 |
| WATER | 2936 | 2827 | 1663 | 2887 |
| AIR | 448 | 760 | 907 | 655 |
| RCRA | 459 | 519 | 613 | 743 |
| TOTAL | 12742 | 10161 | 9105 | 9363 |

### JUDICIAL REFERRALS

| | FY85 | FY86 | FY87 | FY88 |
|---|---|---|---|---|
| WATER | 137 | 221 | 286 | 687 |
| AIR | 182 | 162 | 351 | 171 |
| RCRA | 82 | 25 | 86 | 46 |
| TOTAL | 401 | 408 | 723 | 904 |